87-1497

87 No. 1497

IN THE

Supreme Court of the United States

October Term, 1987

EASTER ENTERPRISES, INC. d/b/a ACE LINES, INC.,
Petitioner,

v.

LORAN W. ROBBINS, MARION M. WINSTEAD, ROBERT S. SANSONE, R. JERRY COOK, HOWARD McDOUGALL, ROBERT J. BAKER, R. V. PULLIAM, SR., AND ARTHUR H. BUNTE, JR., TRUSTEES OF THE CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

David H. Goldman
(Counsel of Record)
John G. Black
BLACK, REIMER & GOLDMAN
550-39th Street, Suite 300
Des Moines, IA 50312
(515) 255-4141
Attorneys for Petitioner

February 19, 1988

QUESTIONS PRESENTED

What is the proper statute of limitations period for a collection action brought against an employer by a Taft-Hartley employee benefit fund pursuant to the Labor Management Relations Act of 1947, as amended (LMRA) and Employee Retirement Income Security Act of 1974, as amended (ERISA)?

a. Should the federal courts borrow the forum state's statute of limitation for the most nearly analogous state cause of action, and, if so should that be:

   i. The forum state's wage payment collection statute of limitation,
   ii. The forum state's unwritten contract statute of limitation,
   iii. The forum state's general statute of limitation for actions not otherwise provided for, or
   iv. The forum state's written contract statute of limitation.

b. Should the federal courts borrow a federal statute of limitation, such as the 3 and 6-year statute of limitation provided in ERISA, that will provide uniformity and which will more nearly serve the statutory purposes involved?

NOTE: Although rejected by the Court of Appeals for the Eighth Circuit, Petitioner considers that the issue may be more narrowly and more appropriately described as:

> "The determination of the applicable statute of limitations for actions brought by Taft-Hartley funds under Section 301 LMRA and Section 515 ERISA seeking monetary collections based upon interpretive challenges to expired collective bar-

gaining agreements negotiated between an employer and the union representing its employees."

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner*, Easter Enterprises, Inc. d/b/a Ace Lines, Inc. (hereinater referred to as "Ace Lines") petitions for a writ of certiorari to review the judgment and decision of the United States Court of Appeals for the Eighth Circuit entered in this case.

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*Petitioner's only affiliate or subsidiary is the Farmers Trust & Savings Bank of Spencer, Iowa.

OPINIONS BELOW

The original order and judgment of the United States District Court for the Southern District of Iowa has been reported at 650 F. Supp. 199 (S.D. Iowa 1985) and is set forth, as amended and modified, in the Appendix as Appendices C, D, and E. Jurisdiction of the District Court was invoked under 29 U.S.C. Section 185(a). The panel opinion and judgment of the Court of Appeals which was reported as *Robbins v. Iowa Roadbuilders, et al.*,** at 824 F.2d 1348 (8th Cir. 1987) and is also set forth in Appendix B. Both sides filed petitions for rehearing alleging the decision of the Court of Appeals for the Eighth Circuit was impracticable. The petitions of Petitioner and Respendent were denied November 24, 1987. [Appendix A]

JURISDICTION

Jurisdiction of this Court to review, by writ of certiorari, the judgment and decision of the United States Court of Appeals for the Eighth Circuit is invoked under 28 U.S.C. Section 1254(1). The decision of the court below issued on September 21, 1987. A timely Petition For Rehearing and Suggestion for Rehearing En Banc was filed, and was denied on November 24, 1987 [Appendix A].

RELEVANT STATUTES

The relevant statutory provisions are as follows:

Section 301(a) of the Labor Management Relations Act, [LMRA], 29 U.S.C. Section 185(a)

(a) Venue, amount and citizenship. Suits for violation

**This case had been consolidated, for purposes of appeal, with a similar case brought by Respondents against Iowa Roadbuilders Co. No petition for writ of certiorari has been filed in that case.

> of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 515 of the Employee Retirement Income Security Act, [ERISA] 29 U.S.C. Section 1145

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collective bargaining agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions or such plan or such agreement.

STATEMENT OF THE CASE

1. *The parties and the 1979-1982 Collective Bargaining Agreement.*

Petitioner, Ace Lines, is incorporated in Iowa and is engaged in the trucking business with its terminals and other operations facilities primarily located in Iowa and Missouri. For at least twenty years, Teamsters Local 147 has been the collective bargaining representative for certain of Ace Lines' employees as specified in the collective bargaining agreements negotiated every three years between Ace Lines and Local 147.

In the 1979 collective bargaining agreement which covered the period April 1, 1979 through March 31, 1982, Ace Lines and Teamsters Local 147 provided that company drivers[1]

[1] Those who drive company owned vehicles as opposed to owner-operators who own the trucks they drive.

would no longer be covered under the Respondent, Central States Southeast and Southwestern Areas Pension Fund but would be covered under a pension program established with Summit National Life Insurance Company. This collective bargaining decision to use a competing pension plan is the essence of the controversy between the Petitioner and Respondents.

2. *Notice of Use of Competing Pension Plan Given to Respondent.*

On September 20, 1979, Teamsters Local 147 sent copies of those contract terms to the International Brotherhood of Teamsters in Washington, D.C., the Central States Conference of Teamsters in Chicago, and to the Respondent, Central States Southeast and Southwest Areas Health and Welfare and Pension Funds.

Respondents' attention was again called to the changes, by a separately filed Fringe Benefit Interim Report for Central States that showed that contributions would be made to Respondents' Central States', health and welfare plan for company drivers but that no contributions would be made to the pension plan for company drivers. Similarly, on October 11, 1979, Ace Lines sent a letter to Central States advising that there was no provision for pension contributions to Central States Pension Fund for company drivers in the collective bargaining agreement. Central States confirmed Ace Lines' understanding in an audit concluded on November 20, 1980 and summarized in a letter dated April 13, 1981 wherein it made no claim for pension plan contributions on behalf of company drivers.

3. *Contract Practices*

Communications, audits and business practices continued in harmony with the express contractual provisions that company drivers were to be covered under a pension plan with Summit National Life Insurance Company and not with Respondent Central States.

4. *1982-1985 Collective Bargaining Agreement*

In the next collective bargaining agreement for the period April 1, 1982 through March 31, 1985, both health and welfare coverage and pension coverage were provided company drivers in plans competing with Respondent Central States' plans.

5. *1985-1988 Collective Bargaining Agreement*

This practice of using competing plans was continued in the contract negotiated between Ace Lines and Local 147 for the period December 15, 1985 through December 14, 1988.

6. *Continuing Contract Practices*

Central States continued to conduct audits and reviews consistent with the collective bargaining agreements' provisions using competing health, welfare and pension plans for company drivers.

7. *Initial Collection Suit*

Respondent, Central States on December 12, 1983, commenced a simple collection action against Ace Lines in the Federal District Court for the Southern District of Iowa, [Appendix H] alleging there was approximately $85,500.00 due Central States from Ace Lines for certain individual employees

who were, it was alleged, not properly reported for the full time of their service. Ace Lines entered into direct discussions with Central States to determine if there had been duplicate reports filed, reporting inaccuracies or proper treatment of billings and credits. As a result of that cooperation and a special audit by Central States of Ace Lines, the amount of the dispute was reduced to less than $40,000.

8. *Amended Petition to Raise "New Interpretive Issues"*

Then on November 8, 1984, Central States moved for Leave to Amend its Complaint and on December 6, 1984, Central States presented its proposed amendment [Appendix F] which raised what Central States called "new interpretive issues". This Complaint alleged that Ace Lines' collective bargaining agreements with Local 147 had been contrary to the National Master Freight Agreement (NMFA) to which it alleged that Ace Lines had been a party at all relevant times. Based on these "new interpretive issues" Central States sought a judgment in excess of $1,000,000 and for attorney fees and costs. Ace Lines resisted and stated that it was not a party to the National Master Freight Agreement and that the amendments raising "new interpretive issues" were, in fact, a new law suit and should be barred by the statutes of limitations.

9. *District Court Ruling*

The U.S. District Court for the Southern District of Iowa concluded[2] in its October 11, 1985 order that

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[2]Central States has not disputed the District Court's characterization, in fact, it has agreed with it. In its appeal brief to the Court of Appeals for the Eighth Circuit, Central States said:

> The gravamen of plaintiffs' claims in the 'First Amended Complaint' was that Ace Lines and IBT Local 147 had executed Riders to the NMFA which were not approved in accordance

> The gravamen of plaintiff's complaint is defendant's alleged failure to comply with its obligations under the collective bargaining agreements. [Appendix E at 25a]

Central States had brought its action to enforce obligations under Section 301(a) of the Labor Management Relations Act of 1947, as amended (LMRA) [29 U.S.C. § 185(a)] and § 515 of the Employee Retirement Income Security Act of 1974 (ERISA) [29 U.S.C. § 1132] as amended by Section 306(a) of the Multiemployer Pension Plan Amendment Act of 1980 (MPPAA) [Pub.L.No. 96-364].

The District Court found that Congress had not provided a statute of limitations specifically applicable to the amended complaint raising the new interpretive issues. It concluded that the appropriate state statute of limitations to borrow was the Iowa Wage Payment Collection Law, Section 91A.4(c), *Code of Iowa* (1985) and the two year statute of limitations applicable to it under Section 614.1(8), *Code of Iowa* (1985). The Court, in its order of March 6, 1986, concluded in response to the Central States' rehearing application that:

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with express provisions of the collective bargaining agreement and, as 'extra-contractual agreements' were unlawful and unenforceable. [CS Brief, 7].

* * *

In fact, the gravamen of Central States' claim against Ace Lines, as set forth in its 'First Amended Complaint,' is that Ace and Local 147 unlawfully modified the terms of the NMFA by executing Riders providing for substandard and/or discriminatory contributions without obtaining approval of the Teamsters Joint Area Conference or National Grievance Committee. *The statute of limitations issue arose as a result of Central States' attempt to enforce the NMFA.* [CS Brief 37 f.n. 14] [emphasis added].

> "The fact that the trust agreements require defendant to make contributions according to the terms of the collective bargaining agreement does not make this a suit under the trust agreements" [Appendix D at 21a]

10. *Interlocutory Appeal*

Central States sought and obtained interlocutory appeal to the Circuit Court of Appeals for the Eighth Circuit which reversed the District Court and held contrary to the Court of Appeals for the Third Circuit that the appropriate state statute of limitations to borrow is the written contract statute of limitations, i.e. Iowa's written 10-year written contract statute of limitations found at Section 614.1(5), *Code of Iowa* (1985). Rehearing petitions by both Petitioner Ace Lines and Respondent Central States were denied November 24, 1987.

REASONS FOR GRANTING THE WRIT

1. The Decision Of The Eighth Circuit Regarding The Appropriate Statute Of Limitations Is In Conflict With The Decisions Of The Third Circuit And The Sixth Circuit

and

2. The Decision Of The Eighth Circuit Regarding The Appropriate Statute Of Limitations Is In Apparent Conflict With A Prior Holding Of This Court.

and

3. The Decisions Of The Eighth Circuit, The Third Circuit, The Sixth Circuit And The Ninth Circuit Regar-

ding The Appropriate Statute of Limitations Present An Issue Of National Importance Which Requires Prompt Resolution.

and

4. The Decisions Of The Eighth Circuit, The Third Circuit, The Sixth Circuit And The Ninth Circuit Regarding The Appropriate Statute Of Limitations Show The Need For A Resolution Giving Uniformity.

ARGUMENT

1. *Split in the Circuits.* The U.S. Court of Appeals in the Third Circuit has twice decided that the forum state's wage payment collection statute is the appropriate state statute of limitations to borrow for contribution collection actions brought by Taft-Hartley funds under Section 301(a) LMRA and Section 515 ERISA. In *Teamsters Pension Trust Fund v. John Tinney Delivery Service*, 732 F.2d 319 (3rd Cir. 1984) and *Byrnes v. DeBolt Transfer, Inc.*, 741 F.2d 620 (3rd Cir. 1984), the Court of Appeals for the Third Circuit has applied the Pennsylvania 3-year wage payment collection statute of limitations to actions under Section 301(a) LMRA and Section 515 ERISA.

The Court of Appeals for the Sixth Circuit applied the Tennessee 6-year statute for "contracts not otherwise provided for" to a case, such as the instant one, which involves interpretation of collective bargaining agreements and the assertion of ERISA jurisdiction to collect contributions to a pension fund. *Central States, Southeast & Southwest Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098 (6th Cir. 1986) (banc), cert. denied 107 S.Ct. 1291 (1987).

The Court of Appeals for the Ninth Circuit has borrowed the Alaska 6-year contract statute of limitations applicable to

both unwritten and written contracts when deciding the appropriate statute of limitations for a case involving a collective bargaining agreement, pension contributions, and an assertion of ERISA jurisdiction without assertion of Section 301 LMRA jurisdiction as is alleged here. *Trustees for Alaska Laborers v. Ferrell,* 812 F.2d 512 (9th Cir., 1987).

The holding of the Court of Appeals for the Eighth Circuit in the instant case specifically rejects the holdings in the two Third Circuit cases. It impliedly rejects the holdings of the Sixth and Ninth Circuits when it adopts a 10-year forum state written contract statute of limitations as the one to be grafted to Section 301 LMRA and Section 515 ERISA actions. Only the Seventh Circuit in *Plasterers v. Journeyman Plasterers,* 794 F.2d 1217, (7th Cir. 1986)[3] has adopted such a lengthy statute of limitations or has rejected this Court's holding in *U.A.W. v Hoosier Cardinal Corp.,* 383 U.S. 696, 86 S.Ct. 1107, 16 L.Ed.2d 192 (1966) that a Section 301 LMRA action should borrow the forum state's *unwritten* contract statute of limitations.

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[3]In footnote 8 at 794 F.2d 1217, 1221-2, the Court of Appeals for the Seventh Circuit *expressly* stated *U.A.W. v. Hoosier Cardinal* governs actions jointly brought under Section 301 LMRA and ERISA, as was the instant case, but the Seventh Circuit *mistakenly* concludes that "In applying the Illinois ten-year limitations for written contracts we believe that the district court acted in conformity with *Hoosier Cardinal.*" [See extended quotations from *Hoosier Cardinal* on pages 11, 12 and 13 of this Petition]. This Court, in *Hoosier Cardinal* expressly used the unwritten contract statute of limitations in Section 301 LMRA actions. It should also be noted that the Seventh Circuit did not have before it a wage payment collection statute and the quoted language from the footnote is not part of the holding. Nevertheless, it demonstrates further conflict in the Circuits.

The Courts of Appeal for the Third, Sixth, Eighth[4] and Ninth Circuits have rendered decisions on this issue which are irreconcilable. That it has arisen in four circuits shows its impact, that it has resulted in conflicting and irreconcilable decisions shows the need for this Court to issue a writ of certiorari so the conflict may be resolved on this crucial issue.

2. *Apparent Conflict with Prior Holding of This Court.* This Court in *U.A.W. v. Hoosier Cardinal Corp.*, applied the Indiana 6-year unwritten contract statute of limitation to an action brought under Section 301 LMRA to enforce terms of a written collective bargaining agreement providing for certain "fringe" benefits. The assertion of the union that the Indiana written contract statute of limitations should apply was rejected by this Court when it stated.

> Section 301 of the Labor Management Relations Act, 1947, confers jurisdiction upon the federal district courts over suits upon collective bargaining contracts. Nowhere in the Act, however, is there a provision for any time limitation upon the bringing of an action under Section 301. The questions presented by this case arise because of the absence of such a provision. (At pp. 697-8)

* * *

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[4]The Eighth Circuit Court of Appeals does not appear to be consistent with itself in deciding cases involving the appropriate statute of limitations for Section 301 LMRA and Section 515 ERISA actions. See the subequent opinion in *Central States Southeast and Southwest Areas Pension Fund, etc., et al. v King Dodge, Inc.*, _____ F.2d _____ (8th Cir. No. 86-2050, December 23, 1987) [Appendix I] wherein the panel appears to suggest that there may be validity in the "Illinois Trust Agreement" contract statute of limitations theory advanced by Central States and expressly rejected by the Eighth Circuit panel in this case which preceded the *King Dodge* decision by one month.

The union argues that if the timeliness of this action is to be determined by reference to Indiana statutes, federal law precludes reference to the Indiana six-year provision governing contracts not in writing. Reference must be made instead, it is urged, to the Indiana 20-year provision governing written contracts. Ind. Stat. Ann. Section 2-602 (1965 Supp.). This contention rests on the view that under federal law this Section 301 suit must be regarded as exclusively bottomed upon the written bargaining agreement. We agree that the characterization of this action for the purpose of selecting the appropriate state limitations provision is ultimately a question of federal law. (At pp. 705-6)

* * *

Applying this principle, we cannot agree that federal law requires that this action be regarded as exclusively based upon a written contract.... The petitioner seeks damages based upon an alleged breach of the vacation pay clause in a written collective bargaining agreement. Proof of the breach and of the measure of damages, however, both depend upon proof of the existence and duration of separate employment contracts between the employer and each of the aggrieved employees. Hence, this Section 301 suit may fairly be characterized as one not exclusively based upon a written contract. (At p. 706)

* * *

The six months' provision governing unfair labor practice proceedings, 61 Stat. 146, 28 U.S.C. Section 160(b), suggests that relatively rapid disposi-

> tion of labor disputes is a goal of federal labor law. *Since state statutes of limitations governing contracts not exclusively in writing are generally shorter than those applicable to wholly written agreements, their applicability to Section 301 actions comports with that goal.*
>
> Accordingly, we accept the District Court's application of the six-year Indiana statute of limitations to this action. . . . (At p. 707) (Emphasis added)

U.A.W. v. Hoosier Cardinal Corp., 383 U.S. at 697-8 and 705-7.

The instant case not only involves determination of the correct statute of limitation to be borrowed for a Section 301 LMRA action as in *U.A.W. v. Hoosier Cardinal*, but it also requires selection of the correct state statute to be borrowed under Section 515 ERISA. Ace Lines argued and the District Court found that the LMRA contract interpretation issue was the gravamen of Central States amended complaint asserting the "new interpretive issues".

The Court of Appeals for the Eighth Circuit did not explicitly reject this characterization but rather found in this Court's decision in *Schneider Moving Storage Company v. Robbins*, 466 U.S. 364, 104 S.Ct. 1844, 80 L.Ed.2d 366 (1984) a universal characterization of actions brought by trustees of pension funds that predominates over any potential collective bargaining contract issue under Section 301 LMRA. Ace Lines asserts that this is a serious misreading of *Schneider*, and has the effect of impliedly negating the ruling of this Court in *Hoosier Cardinal*, with respect to the appropriate state statute of limitations to be borrowed in a Section 301 LMRA action interpreting and enforcing the terms of a collective bargaining agreement.

When Congress passed MPPAA in 1980, it was aware of

this Court's long standing rule under *Hoosier Cardinal* that the forum states's unwritten contract statute of limitations would apply to Section 301 LMRA actions. In passing MPPAA with this knowledge, Congress expressly tailored the MPPAA obligation to be a second jurisdictional basis for enforcing a collective bargaining agreement not a new and separate cause of action. Congress specifically provided:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collective bargaining agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement. (Section 306 of MPPAA, § 29 U.S.C. § 1145)

Such language when used by Congress can only be considered an incorporation of existing federal labor law under Section 301 LMRA including this Court's ruling in *Hoosier Cardinal*. Indeed, this Court has recognized that in adopting ERISA Congress did not intend to repeal or modify existing federal labor law under Section 301 LMRA. *Kaiser Steel Corporation v. Mullins*, 455 U.S. 72, 102 S.Ct. 851, 70 L.Ed.2d 295.

3. *An Issue of National Importance is Presented Which Requires Prompt Resolution*. Approximately 12,000,000 employees in the United States are covered by collective bargaining agreements. These agreements generally run in length from between 1 to 3 years. They are at the core of a labor policy that has served the United States exceedingly well by replacing violence, threats and abuse with an outstanding record of negotiated resolution of disputes through the collective bargaining process.

The decision of the Court of Appeals for the Eighth Circuit

holds that a nonparty to the labor agreement may, as much as ten years and three or more collective bargaining agreements later, challenge the interpretation of the contracts to which the employer and union parties have expressly agreed and to which they have conformed their conduct and upon which they have relied in making, modifying and adjusting the balances in their relationship from each contract term to the next.

Here the parties agreed to use health and welfare and pension plans that compete with Central States. They did this through the collective bargaining process. They obligated themselves to contracts which were clear and unambiguous in their intent with regard to this issue, and they conformed their conduct to their agreements. Significantly, they told Central States exactly what their agreements were and they informed Central States that competing plans had been selected.

Central States over five years and three collective bargaining agreements later now seeks to raise "new interpretive issues" that contend that the collective bargaining agreements were in violation of the National Master Freight Agreement to which it alleges Ace Lines was a party at all relevant times. The issue, then, is which collective bargaining agreement applies or how inconsistent terms are resolved if both apply. Very simply, this is a fundamental issue of collective bargaining agreement interpretation under Section 301 LMRA. Employers, employees and unions need to know how long Taft-Hartley funds can wait before they are required to assert interpretive challenges to collective bargaining agreements.

This Court must balance the conflicting Courts of Appeals' decisions which have been unable to formulate a common rule. Statutes of limitation cases require predictability of result.

The decision of the Court of Appeals for the Eighth Circuit

presents a serious threat to the stability and predictability of collective bargaining agreements and allows collective bargaining interpretation challenges to be brought so late that compromise and resolution are impossible because the accumulated dollars are so large as to be economically ruinous to the employer if it looses. Even more significant, such a long statute of limitations denies the parties the opportunity to adjust their relationship in the next collective bargaining agreement they negotiate.

A reasonable statute of limitations would enable the parties to address disputed issues in their next contract. It would not permit a challenging party the opportunity to delay for ten years and three or more contracts, before raising a challenge of which it was aware. Such a long period of possible challenge puts employers and unions on notice that participating in multi-employer Taft-Hartley pension funds could be ruinous on some later thought up theory of the third-party fund trustee. This establishes a strong economic disincentive to be a participant in a multi-employer pension fund. Such a bizarre result is in conflict with the very purposes of the federal labor policies embodied in and served by the NLRA, LMRA, ERISA and MPPAA.

Finally, trust funds themselves, need to know with certainty how long they may sit on their rights. When they are aware of collective bargaining challenge, they need to know by what date they must assert their claims. This cannot be left to conflicting and ambiguous court decisions.

There are over 500,000 employers in the United States contributing to about 2,000 multiemployer plans covering an estimated 8,000,000 workers and retirees. Bruce, Stephen R. *Pension Claims Rights & Obligations,* B.N.A. 1988, p. 626. Given the importance of the question to these employers,

employees and plans, it cannot be doubted that the issue is one of genuine national importance.

4. *The Need for Uniformity.* Ace Lines is mindful of the constraints of the rationale in *Wilson v. Garcia,* _____ U.S. _____ 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985), but there is a need for national uniformity and predictability in the choice of the statute of limitations for Section 301 LMRA and Section 515 ERISA actions.

It may be that the inability of the Third, Sixth, Eighth and Ninth Circuits to agree suggests that individual state statutes of limitations be rejected in favor of the 3 and 6 year ERISA statutes of limitations[5] which distinguish between claims involving actual knowledge of the existence of the claim and those claims where such knowledge was lacking. This Court's decision in *Del Costello v. International Brotherhood of Teamsters,* 462 U.S. 151, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983) contains a recognition not only of the need to move labor disputes to a speedy resolution, but as well, the need for a uniform national policy on certain federal labor law statutory claims. Consideration should be given to resolving the existing split in the circuits in accord with the *Del Costello,* rationale rather than the *Wilson v. Garcia,* rationale.

This Court has made it clear in *Kaiser Steel v. Mullins,* 455 U.S. 72, 102 S.Ct. 851, 70 L.Ed.2d 295 (1982) that Congress did not intend, by adopting the ERISA, to repeal "the labor laws, and any other statute which might be raised as a defense to a provision of the collective bargaining agreement requir-

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[5]For the ERISA 3 year statute of limitations *See:* 29 U.S.C. § 1113(a)(2); 1370(f)(1)(B) and 1451(f)(2) and for the ERISA 6 year statute of limitations. *See:* 29 U.S.C. § 1113(a)(1); 1370(f)(1)(A) and 1451(f)(1).

ing an employer to contribute to a pension fund", *Kaiser Steel Corporation v. Mullins,* 455 U.S. 78 at 88.

As in *Agency Holding Corp. v. Malley-Duff Associates,* _____ U.S. _____, 107 S.Ct. 2759, 2764 (1987), both parties have argued for a uniform and predictable statute of limitation. Central States and Ace Lines both filed petitions for rehearing before the Court of Appeals for the 8th Circuit and both argued that the court's holding was unworkable as a practical matter. This Court, in another statutory context, has recognized in *Agency Holding v. Malley-Duff Associates,* 107 S.Ct. at 2765, that "the federal policies at stake and the practicalities of litigation [can] strongly suggest" a need for a federal limitations period that is uniform rather than relying on disparate and conflicting state statutes of limitations.

Unlike the problems with RICO, this Court need not go to another federal statute such as the Clayton Act to find an appropriate statute of limitations, it need only look to the limitations periods contained within ERISA but which Congress did not expressly make applicable to a collection action to enforce a collective bargaining agreement under Section 515 of ERISA.

The need for a uniform national statute of limitations for ERISA collection actions has been recognized by the Court of Appeals of the Ninth Circuit.

> . . . [t]here are strong reasons for creating a uniform federal rule governing the limitation of actions for collection of delinquent ERISA contributions — including the fact that multiemployer trust funds may cover employers operating in a number of states. . .

Hawaii Carpenters v. Waiola Carpenter Shop, Inc., 823 F.2d 289, 297 (9th Cir. 1987).

Only by a resolution in this Court, can a prompt end be put

to the confusion and ambiguity raised by the conflicting circuit Courts of Appeal decisions which provoke litigation and risk severe, unexpected and unbargained for economic loss by employees, employers, and Taft-Hartley trust funds.

CONCLUSION

Decisions that the Third, Sixth, Eighth and Ninth Circuit Courts of Appeals amply demonstrate that there is not only a split in the circuits but almost complete diversity of opinion, rationales and holdings. In any important area of law such a state would not long be tolerable, in this crucial area affecting the economic survival of employers and employees it demands immediate attention.

It would be difficult to overstate the nationwide significance raised by this serious question on which the circuit courts of appeals have been unable to agree. There must, at a minimum, be predictability of result and, if at all possible, uniformity of result. Only this Court can provide either, unless Congress acts to supply a statute of limitation—something it thus far not done. It is difficult to argue that further delay in resolving this conflict serves a useful purpose let alone a useful purpose which outweighs the serious damage being caused by not resolving the split between the circuit courts of appeals.

The Third, Sixth, Eighth and Ninth Circuits have dealt squarely with the statute of limitations issue and the Seventh Circuit has commented upon it. Little guidance will be obtained by further circuits coming to the wilderness and much will be lost through forum shopping, needless procedural litigation, uncertainty and conflicting state statutes of limitations, as parties are forced to relitigate an already irreconcilable set of federal circuit courts of appeals rationales and holdings.

Petitioner and Respondent fairly represent the thousands of multi-employer pension plans, the hundreds of thousands of employers participating in such plans and the millions of workers and retirees covered by such multi-employer plans. These plans and the affected employers, employees and unions will suffer substantial loss or injury, solely as a result of the existing and irreconcilable conflict in the decisions of the five circuit courts of appeals that have dealt with the issue. Very simply, the failure to issue the writ of certiorari will cause great harm and serve no useful purpose. The harm here is the pernicious injury caused not by having made the wrong decision, but by having imposed on employers, employees, unions and Taft-Hartley funds rules that are inconsistent, conflicting and irreconcilable. A final decision on a procedural point of this magnitude must be made. Only this Court can do that. It is respectfully submitted that the time to do it is now.

Respectfully submitted,

/s/ David H. Goldman
David H. Goldman
(Counsel of Record)

/s/ John G. Black
John G. Black

BLACK, REIMER & GOLDMAN
550-39th Street, Suite 300
Des Moines, IA 50312
(515) 255-4141

Attorneys for Petitioner

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David H. Goldman
(Counsel of Record)
John G. Black
BLACK, REIMER & GOLDMAN
550-39th Street, Suite 300
Des Moines, IA 50312
(515) 255-4141
Attorneys for Petitioner

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

LORAN W. ROBBINS, et al.,	)	
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	)	
vs.	)	
	)	
IOWA ROAD BUILDERS COMPANY, and EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC.,	)	ORDER DENYING PETITION FOR REHEARING
Appellees.	)	

The petition for rehearing en banc of appellants and appellee, Easter Enterprises, Inc., have been considered by the Court and are denied.

Petitions for rehearing by the panel are also denied.

November 24, 1987

Order entered at the Direction of the Court:

/s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 86-1347

Loran W. Robbins; Marion M. Winstead; Harold J. Yates; Earl L. Jennings, Jr.; Howard McDougall; Robert J. Baker; Thomas F. O'Malley; and R. V. Pulliam, Sr.; Trustees of the Central States, Southeast and Southwest Areas Pension Fund, and Central States, Southeast and Southwest Areas Health and Welfare Fund,

Appellants,

v.

Iowa Road Builders Company,

Appellee.

Appeals from the United States District Court for the Southern District of Iowa

No. 86-1399

Loran W. Robbins; Marion M. Winstead; Harold J. Yates; Earl L. Jennings, Jr.; Howard McDougall; Robert J. Baker; Thomas F. O'Malley; and R. V. Pulliam, Sr.; Trustees of the Central States, Southeast and Southwest Areas Pension Fund, and Central States, Southeast and Southwest Areas Health and Welfare Fund,

Appellants,

v. *
Easter Enterprises, Inc., *
d/b/a/ Ace Lines, Inc. *
Appellees. *

Submited: December 8, 1986
Filed: September 21, 1987

Before McMILLIAN and BOWMAN, Circuit Judges, and CONMY,* District Judge.

McMILLIAN, Circuit Judge.

These cases have been consolidated for purposes of appeal. Appellants are the trustees of two large multiemployer employee benefit plans, the Central States, Southeast and Southwest Areas Pension Fund and the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter collectively the funds), that operate as trusts for the purpose of providing certain health, welfare and pension benefits to employees covered by collective bargaining agreements negotiated between various employers and local Teamster unions. The funds were established pursuant to § 302(c)(5) of the Labor Management Relations Act of 1947 (LMRA), 29 U.S.C. § 186(c)(5), and are governed by the provisions of the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 29 U.S.C. § 1145.

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*The Honorable Patrick A. Conmy, Chief Judge, United States District Court for the District of North Dakota, sitting by designation.

Appellants appeal from two orders entered in the District Court for the Southern District of Iowa applying Iowa's two-year statute of limitations for actions under the Iowa wage payment collection law, Iowa Code Ann. §§ 91A, 614.1(8) (West 1984 & Supp. 1987). *Robbins v. Easter Enterprises, Inc.*, 650 F.Supp. 199, 201 (S.D. Iowa 1985) (*Easter Enterprises); Robbins v. Iowa Road Builders Co.*, Civil No. 84-471-A, slip op. at 4 (S.D. Iowa Mar. 6, 1986) (*Iowa Road Builders*). For reversal appellants argue the district court should have instead applied either Illinois's ten-year statute of limitations for actions for breach of written contracts, Ill. Rev. Stat. ch. 110, § 13-206 (1985), pursuant to the choice of law provision in the trust agreements and conflict of laws analysis, or, alternatively, pursuant to the law of the forum state, Iowa's ten-year statute of limitations for actions for breach of written contracts, Iowa Code Ann. § 614.1(5). For the reasons discussed below, we reverse and remand each case for further proceedings consistent with this opinion.

Robbins v. Iowa Road Builders Co., No. 86-1347

Iowa Road Builders Co. (hereinafter IRB), an Iowa corporation engaged in the business of heavy construction, entered into a collective bargaining agreement with Teamsters Local 90 covering IRB employees at IRB's Ames plant, effective May 1979-April 1982. In 1981 IRB opened another plant in Des Moines; IRB and Local 90 entered into a separate collective bargaining agreement covering IRB's Des Moines employees, effective August 1981-July 1982, renewable every year. Each collective bargaining agreement required IRB to participate in the funds and to make monthly contributions to the funds at specified rates on behalf of its employees. The rate of contribution for IRB's Des Moines employees was higher than that for IRB's Ames employees. On August 1, 1981, IRB signed a "participation agreement" in which it

agreed to be bound by the terms of the funds. In September 1981 IRB and Local 90 agreed that IRB's contributions for any Ames employees who were "temporarily" transferred to the Des Moines plant would be made at the lower rate for Ames employees.

Later appellants and IRB disagreed about the applicable rate of contributions to be made for certain IRB employees who worked at the Des Moines plant for several months during 1981. IRB treated these employees as only temporary transfers and thus argued that contributions to the funds for these employees were to be made at the lower Ames rate. Appellants, however, argued that these employees should have been treated as either permanent transfers or new hires, and therefore IRB should have made contributions to the funds for these employees at the higher Des Moines rate.

On June 22, 1984, appellants filed a complaint in federal district court against IRB pursuant to LMRA § 301(a), 29 U.S.C. § 185(a), and ERISA § 502, 29 U.S.C. § 1132 (as amended by MPPAA § 306, 29 U.S.C. § 1145, to recover the delinquent contributions. Appellants sought $4,667.00 in delinquent contributions to the pension fund, $1,652.50 in delinquent contributions to the health and welfare fund, plus interest, liquidated damages, and attorney's fees and costs. IRB moved for summary judgment, arguing that this dispute arose, and thus appellants' claim for delinquent contributions to the funds necessarily accrued, at some point before November 1981, when IRB ceased operations. Thus, IRB argued, because appellants' complaint was not filed until June 1984, more than two years later, it was barred by the two-year statute of limitations applicable to Iowa wage payment collection actions. The district court agreed with IRB's statute of limitations argument and granted summary judgment in favor of IRB. *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 4. Appellants appealed.

Robbins v. Easter Enterprises, Inc. (Ace Lines, Inc.), No. 86-1399

Easter Enterprises, Inc., doing business as Ace Lines, Inc., an Iowa corporation engaged in the trucking business (hereinafter Ace Lines), entered into the following collective bargaining agreements with Teamsters Local 147: the 1976-1979 and 1979-1982 National Master Freight Agreement (NMFA), Central States Area Local Cartage Supplemental Agreement and the Central States Area Over-the-Road Supplemental Agreement. (Ace Lines also entered into similar collective bargaining agreements with Teamsters Local 544, which represented a small group of Ace Lines employees located in Minneapolis.) The supplemental agreements incorporated the trust agreements by reference and required Ace Lines to make monthly contributions on behalf of regular employees on the payroll for 30 days to the funds. Ace Lines also executed "participation agreements" in which it agreed to be bound by the terms of the trust funds.

Under the terms of the NMFA, subcontracting was prohibited except on an "overflow" basis. The NMFA also prohibited local unions and employers from entering into agreements or "riders" to modify the terms of the NMFA without the approval of the Conference Joint Area Committee or the National Grievance Committee. The NMFA further provided that any substandard riders or riders that had not been approved by either committee were null and void.

In December 1983 appellants filed an action in federal district court against Ace Lines pursuant to LMRA § 301(a), 29 U.S.C. § 185(a), and ERISA § 502, 29 U.S.C. § 1132 (as amended by MPPAA § 306, 29 U.S.C. § 1145), to recover delinquent contributions. Appellants sought $56,011.60 in delinquent contributions to the pension fund, and $32,671.59 in delinquent contributions to the health and welfare fund, through Octo-

ber 19, 1983, plus interest, liquidated damages, and attorney's fees and costs. In January 1984 Ace Lines filed an answer, specifically asserting, in addition to other defenses, that appellants' action was barred by either the six-month statute of limitations applicable to hybrid § 301/breach of the duty of fair representation claims, citing *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 158 (1983) *(DelCostello)*, or by the two-year statute of limitations applicable to Iowa wage payment collection actions, Iowa Code Ann. § 614.1(8).

During the fall of 1984, by agreement of the parties, fund auditors were permitted to examine Ace Lines' books and records. The auditors discovered substantial additional delinquent contributions. In November 1984 appellants filed a motion for leave to amend their complaint to add claims for the newly discovered delinquent contributions. Most of the newly discovered delinquent contributions were due under the 1979-1982 agreements, but some were due under the earlier 1976-1979 agreements. In December 1984 appellants submitted, but did not file because the magistrate had not yet ruled on their motion for leave to amend, their first amended complaint seeking an additional $1,040,000, plus interest, in delinquent contributions to the pension fund, and $110,000, plus interest, in delinquent contributions to the health and welfare fund.

Appellants claimed that Ace Lines and Teamsters Local 147 had executed improper "riders" to the NMFA under which Ace Lines had stopped contributing to the pension fund on behalf of certain "company drivers" and "owner-operators" hired after April 1, 1979, and had instead established and contributed to non-Teamster pension funds for these employees, and had withheld contributions to the health and welfare fund until its employees had been employed for 60 days, instead

of the 30 days provided in the NFMA. Appellants argued that these "riders" had not been approved by either the Conference Joint Area Committee or the National Grievance Committee and thus were invalid and unenforceable. Appellants also argued that Ace Lines' "trip-leasors" were regular employees, not subcontractors, and thus Ace Lines should have made contributions to the funds for them.

Ace Lines opposed appellants' motion for leave to amend and renewed its argument that most of appellants' claims for unpaid contributions were barred by a two-year statute of limitations. Appellants argued that their claims, even for contributions allegedly due in 1976, were not time-barred because the applicable statute of limitations was either the Illinois ten-year statute of limitations for actions on written contracts, specified by the choice of law provision in the trust agreements, or the Iowa ten-year statute of limitations for actions on written contracts. Appellants argued that application of the shorter two-year statute of limitations to claims against employers for delinquent contributions due to employee benefit funds, which operate under a self-reporting contribution system, subject to random audits, would unduly frustrate the policy objectives of ERISA.

In January 1985 the magistrate granted appellants' motion for leave to file Count I of their amended complaint, but applied the two-year statute of limitations applicable to Iowa wage payment collection actions, thus limiting appellants' claims for delinquent contributions to those filed in December 1983. *Robbins v. Easter Enterprises, Inc.*, Civ. No. 83-687-B, slip op. at 2 (S.D. Iowa Jan. 23, 1985) (order of magistrate).[1] The

[1]The magistrate also denied appellants leave to file Count II of their amended complaint which alleged withdrawal liability under ERISA, as amended by the MPPAA, on the grounds that withdrawal liability was subject to arbitration; the dismissal of Count II is not an issue in these appeals.

district court affirmed the magistrate's decision but modified the order to toll the running of the two-year limitations period from December 6, 1984, the date of the amended complaint, instead of the original filing date. 650 F.Supp. at 201-02. The district court also reconsidered its characterization of the nature of the action in light of *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364 (1984) (*Schneider Moving*), and reaffirmed its view of the action as one involving enforcement of collective bargaining agreements, not trust agreements. 650 F.Supp. at 202 (Mar. 7, 1986) (order on post-trial motions). The district court then certified its order as one involving "a controlling question of law as to which there is substantial ground for difference of opinion" for immediate appeal. *Id.*; 28 U.S.C. § 1292(b). This court granted the interlocutory appeal (No. 86-1399) and consolidated the cases for purposes of appeal.

The district court's analysis of the statute of limitations defense was the same in each case. The district court acknowledged in each case that appellants' claims for delinquent contributions to the pension fund and health and welfare fund were based on ERISA, as amended by the MPPAA. *Easter Enterprises*, 650 F.Supp. at 201; *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 1. The district court, however, then characterized the "gravamen" of appellants' complaint in each case as involving the employer's "alleged failure to comply with its obligations under the collective bargaining agreements" and thus viewed these cases as actions to enforce collective bargaining agreements and not as matters of trust administration. *Easter Enterprises*, 650 F.Supp at 201; *Iowa Road Builders*, Civil No. 84-471-A, slip. op. at 2. Consequently, the district court decided that the choice of law provision contained in the trust agreements, which specified the Illinois statute of limitations for actions for breach of written contracts, was "inapposite" to an action to enforce collective bargain-

ing agreements. *Easter Enterprises*, 650 F.Supp. at 201; *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 2. The district court decided that Iowa had the most significant relationship to the actions and that the most analogous Iowa statute of limitations was the two-year statute of limitations applicable to actions under the Iowa wage payment collection law, Iowa Code Ann. Sections 91A, 614.1(8), which specifically defines "wages" to include payments to employee benefit funds due under an agreement with the employer, *id.* § 91A.2(4)(c). *Easter Enterprises*, 650 F.Supp. at 201, citing *Teamsters Pension Trust Fund v. John Tinney Delivery Service, Inc.*, 732 F.2d 319, 322-23 (3d Cir. 1984) (*John Tinney*) (three-year statute of limitations for Pennsylvania wage payment and collection act), and *Byrnes v. DeBolt Transfer, Inc.*, 741 F.2d 620, 625 (3d Cir. 1984) (*DeBolt Transfer*) (following *John Tinney* decision as controlling, without additional analysis); *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 3 (citing same 3d Cir. cases).

For reversal appellants argue the district court erred in characterizing these actions to collect unpaid contributions as actions to enforce the collective bargaining agreements. Appellants characterize these actions as actions for judicial enforcement of the trust agreements, which were incorporated by reference in the collective bargaining agreements or the participation agreements, or both, and not as labor disputes. Appellants thus argue the district court should have applied the statute of limitations for actions for breach of written contracts, pursuant to the Illinois choice of law provision in the trust agreements or, alternatively, pursuant to the law of the forum state.

In response IRB and Ace Lines argue that the district court's view of appellants' actions as involving labor disputes and enforcement of collective bargaining agreements was correct.

IRB and Ace Lines argue that because the statutory definition of "wages" specifically includes employer contributions to employee benefit funds, Iowa Code Ann. § 91A.2(4)(c), the district court correctly determined that an action under the Iowa wage payment collection law was "most analogous" to an action to collect delinquent contributions under ERISA, or the LMRA, for statute of limitations purposes. IRB and Ace Lines further argue that because they are not parties to the trust agreements for either the pension fund or the health and welfare fund, the only "written contracts" at issue in these actions are the collective bargaining agreements, not the trust agreements.

Appellants' complaints alleged claims for breach of the trust agreements pursuant to ERISA § 302(a), 29 U.S.C. § 1132(a).[2] This statute provides a basis for federal jurisdiction, and a federal forum, for these claims. *See Schneider Moving*, 466 U.S. at 366 n.2. Because an action to collect delinquent fund contributions states a federal cause of action, appellants' arguments about the choice of law provision in the trust agreements and conflicts of law principles, arguments which are premises upon diversity jurisdiction, are inapposite. *Central States, Southeast & Southwest Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1105 n.5 (6th Cir. 1986) (banc) (*Kraftco*), *cert. denied*, 107 S.Ct. 1291 (1987).

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[2]Appellants' complaints also cite LMRA § 301(a), 29 U.S.C. § 185(a). If the collective bargaining agreement does not incorporate the trust fund agreement by reference and the employer has not executed a participation agreement, then the trustees of the fund can sue the employer under LMRA § 301(a), 29 U.S.C. § 185(a), as third-party beneficiaries of the collective bargaining agreement. *Lewis v. Benedict Coal Co.*, 361 U.S. 459 (1960). On appeal, however, appellants argue that they seek enforcement of the trust agreements, not the collective bargaining agreements. Brief for Appellants at 22-24.

ERISA does not (nor does LMRA § 301(a), 29 U.S.C. § 185(a), however, contain a statute of limitations applicable to trustee actions to recover delinquent contributions.[3] "When Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so." *Wilson v. Garcia*, 471 U.S. 261, 266-67 (1985) (footnote omitted) (statute of limitations applicable to 42 U.S.C. § 183 actions); *see also DelCostello*, 462 U.S. at 170-71 (hybrid § 301/breach of the duty of fair representation claims); *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 703-04 (1966) (LMRA § 301 claims). Accordingly, we must determine the "most appropriate," *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975), or the "most analogous," *Board of Regents v. Tomanio*, 446 U.S. 478, 488 (1980), Iowa statute of limitations to apply to appellants' ERISA claims. In order to do so, we must first "characterize the essence of the claim in the pending case, and decide which state statute provides the most appropriate limiting principle." *Wilson v. Garcia*, 471 U.S. at 268.

> The characterization of [a federal claim] for statute of limitations purposes is derived from the elements of the cause of action, and Congress' purpose in providing it. These, of course, are matters of federal law. . . . Only the length of the limitations period, and closely related questions of tolling and application, are to be governed by state law.

Id. at 268-69 (footnote omitted); see also *UAW v. Hoosier Cardinal Corp.*, 383 U.S. at 706.

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[3]Statutory amendment would be desirable for the establishment of a uniform limitations period where, as here, the trust agreements and administration are multi-state.

> By adopting the statute governing an analogous cause of action under state law, federal law incorporates the State's judgment on the proper balance between the policies of repose and the substantive policies of enforcement embodied in the state cause of action. However, when the federal claim differs from the state cause of action in fundamental respects, the State's choice of a specific period of limitation is, at best, only a rough approximation of "the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones."

Wilson v. Garcia, 471 U.S. at 271, *citing Johnson v. Railway Express Agency, Inc.*, 421 U.S. at 463-64. "[S]tate law is applied only because it supplements and fulfills federal policy, and the ultimate question is what federal policy requires." *UAW v. Hoosier Cardinal Corp.*, 383 U.S. at 709 (White, J., dissenting).

The choice here is between actions for breach of written contracts and actions under the wage payment collection law. The district court followed the analysis of the Third Circuit and held that the state cause of action to collect unpaid wages, which are defined by the statute of include contributions to employee benefit funds, was most analogous to the trustees' federal cause of action under ERISA to collect delinquent contributions. *Easter Enterprises*, 650 F.Supp. at 201, *citing John Tinney*, 732 F.2d at 322-23, and *DeBolt Transfer*, 741 F.2d at 625 (following *John Tinney* decision as controlling, without additional analysis); *Iowa Road Builders*, Civil No. 84-471-A, slip op. at 3 (citing same 3d Cir. cases). However, for the reasons discussed below, we hold that the "most appropriate" characterization of trustee actions under ERISA to collect delinquent contributions for statute of limitations purposes is

as actions for breach of written contracts. *See, e.g., Trustees for Alaska Laborers-Construction Industry Health & Security Fund v. Ferrell,* 812 F.2d 512, 517 (9th Cir. 1987); Kraftco, *799 F.2d at 1105; Trustees of Operative Plasterers' Local Union Officers & Employees Pension Fund v. Journeymen Plasterers' Protective & Benevolent Society, Local Union No. 5,* 794 F.2d 1217, 1221-22 n.8 (7th Cir. 1986) *(Plasterers). Cf. Kraftco,* 799 F.2d at 1107-08 (LMRA § 301(a) actions); *IAM v. Allied Products Corp.,* 786 F.2d 1561, 1563 (11th Cir. 1986) (same); *Smith v. Kerrville Bus Co.,* 748 F.2d 1049, 1051 (5th Cir. 1984) (same); *O'Hare v. General Marine Transport Corp.,* 740 F.2d 160, 167-68 (2d Cir. 1984) (same), *cert. denied,* 469 U.S. 1212 (1985).

We do not find dispositive the state statutory definition of "wages" or state case law applying the state wage payment collection statute, *see, e.g., Teamsters Local Union No. 90 v. White,* 333 N.W.2d 839 (Iowa 1983). State authority is helpful, but the characterization of the federal claim for purposes of determining which state cause of action, and corresponding state statute of limitations, is most analogous is "ultimately a question of federal law." *UAW v. Hoosier Cardinal Corp.,* 383 U.S. at 706; *see also Wilson v. Garcia,* 471 U.S. at 270 & n.22.

We perceive fundamental differences between the state and federal claims that make characterization of appellants' claim under ERISA for delinquent contributions as an action under the state wage payment collection law unreasonable and inconsistent with federal labor and pension policy.[4] Although both

[4]Appellants' cause of action is a federal one and, to the extent that state law conflicts with either ERISA or LMRA (or the National Labor Relations Act, 29 U.S.C. § 151 et seq.), it is pre-empted. *Cf. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985); National Metalcrafters v.McNeil,* 784 F.2d 817, 826-829 (7th Cir. 1986) (action for vacation pay under Illinois wage payment law held pre-empted by federal labor law in context of collective bargaining agreement).

types of actions seek the recovery of employment benefits, wage payment collection actions involve attempts by employees, or the state commissioner of labor, to obtain employment benefits directly from the employer. In general, a dissatisfied employee will realize when the employer has failed to afford him or her a particular employment benefit and can then promptly initiate an action against the employer, or file a complaint with the state commissioner of labor, under the state wage payment collection law. In contrast, the trustees of employee benefit trust funds act as fiduciaries of the beneficiaries of the funds. *See Schneider Moving*, 466 U.S. at 372-76 & n.13, *citing NLRB v. Amax Coal Co.*, 453 U.S. 322, 337 (1981). The trustees may not discover underpayments until a beneficiary applies for benefits, which can be some years after the employment relationship has ended. Given the self-reporting system of employer contributions to the funds, the trustees may not discover a particular employer owes delinquent contributions unless and until they conduct an audit. *See Central States, Southeast & Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559 (1985) (*Central Transport*).

More importantly, however, we think that the Third Circuit's position, which was followed by the district court in the present case, must be reconsidered in light of the Supreme Court's subsequent treatment of trustee actions under ERISA in *Schneider Moving and Central Transport*. In each case, the Supreme Court distinguished actions brought by the trustees of employee benefit trust funds to enforce the trust agreements, whether brought directly under trust agreements or indirectly as third-party beneficiaries under collective bargaining agreements, from actions brought by either unions or employers to enforce collective bargaining agreements, and clearly characterized trustee actions under ERISA as actions

to enforce the trust agreements and not as actions to enforce the collective bargaining agreements. *Central Transport*, 472 U.S. at 569-82; *Schneider Moving*, 466 U.S. at 371-76; *see also NLRB v. Amax Coal Co.*, 453 U.S. at 337.

In our view, the district court and the employers placed too much emphasis upon the "labor dispute" aspects of this litigation. In the typical "labor dispute," labor and management may resort to the use of economic weapons that will disrupt "labor peace." In those situations, the courts often defer to the "relatively rapid final resolution of labor disputes favored by federal law," *DelCostello*, 462 U.S. at 168, and require arbitration, *see Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578, 582-83 (1960), or apply relatively short statutes of limitation, *see DelCostello*, 462 U.S. at 161-70, in order to promote the objectives of collective bargaining and to restore labor peace. In comparison, however, these appeals involve disputes between the trustees and the employer over fund contributions in which the parties are unlikely to resort to the use of economic weapons, disputes that are essentially over matters of trust administration. As noted in *Schneider Moving*, 466 U.S. at 372 & n. 13, disputes between the trustees and the employer over fund administration, like the "disputes between benefit fund trustees over the administration of the trust cannot, as can disputes between parties in collective bargaining, lead to strikes, lockouts, or other exercises of economic power. *NLRB v. Amax Coal Co.*, 453 U.S. at 337. "Although the employer has economic weapons at its disposal, they would serve little purpose in disputes with the trustees of employee-benefit funds. *Schneider Moving*, 466 U.S. at 372 n.13.

We hold the state cause of action for breach of written contracts, and the applicable statute of limitations, is most analogous to trustee collection actions under ERISA. *See Fer-*

rell, 812 F.2d at 517; *Kraftco*, 799 F.2d at 1105; *Plasterers*, 794 F.2d at 1221-22 n.8[5] Appellants' actions are not barred under Iowa's ten-year statute of limitations for actions for breach of written contracts. Accordingly, the orders of the district court are reversed and the cases are remanded to the district court for further proceedings consistent with this opinion.

A true copy.

ATTEST:
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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[5]We also reject application of the six-month period provided in 29 U.S.C. § 160(b) for unfair labor practice charges and applied to hybrid § 301/breach of the duty of fair representation claims in *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151 (1983). *See Trustees for Alaska Laborers-Constr. Indus. Health & Sec. Fund v. Ferrell*, 812 F.2d 512, 517 (9th Cir. 1987); *Central States, Southeast & Southwest Areas Pension Fund v. Kraftco, Inc.*, 799 F.2d 1098, 1105-07 (6th Cir. 1986) (bnac), *cert. denied*, 107 S.Ct. 1291 (1987).

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al., Plaintiffs, vs. EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC., Defendants	)	CIVIL NO. 83-687-B ORDER

This matter comes before the Court once again, this time on plaintiff's motion to clarify the Court's rulings of October 11, 1985, and March 7, 1986. In an effort to set the record straight, the Court will review the history of the procedural aspects of this litigation.

Plaintiffs filed their original complaint in this action on December 12, 1983. The original complaint consists of two counts alleging inaccuracies in defendant's record keeping and administration of certain benefit plans. The requested relief totals approximately $88,500.00.

On November 8, 1984, plaintiffs filed a motion for leave to amend their complaint. The proposed "First Amended Complaint" was submitted to the Court on December 6, 1984. The "First Amended Complaint" consists of two counts, designated "Count I" and "Count II." Count I alleges in essence that defendant excluded a substantial number of employees from coverage under the benefit plans. Count II alleges that defendant has

withdrawn from the pension plan and owes a substantial withdrawal payment. The relief requested in the proposed amended complaint totals approximately $1.15 million. No mention is made of the claims set forth in plaintiff's original complaint, for that reason, the amended complaint could be misconstrued as a substituted complaint.

On January 23, 1985, United States Magistrate R. E. Longstaff ruled that the claims in Count I of the amended and substituted complaint are confined by a two-year statute of limitations. Magistrate Longstaff denied the motion to amend insofar as it sought to add the new Count II, and he ordered plaintiffs to file a revised amended complaint within 20 days. No such complaint has been filed.

On October 11, 1985, the Court affirmed the Magistrate's application of the two-year statute of limitations, but found that Count I of the amended complaint alleged a new cause of action and therefore could not relate back to the time of the original complaint. Thus, plaintiff's claim in the proposed Count I is limited to losses incurred no earlier than two years before the proposed amended complaint was submitted. On March 7, 1986, the Court denied plaintiff's motion to alter or amend its October 11, 1985, ruling.

Plaintiffs now ask the Court to clarify the effect of its previous orders on the claims asserted in plaintiffs' original complaint. They suggest that the Court's orders appear to bar all claims not accruing within two years prior to December 6, 1984.

The Court does not understand the need for clarification in this matter, unless it was caused by a confusion of plaintiffs' "First Amended Complaint" for an amended and substituted complaint. In any event, this Court views and has always viewed plaintiffs' amended complaint as just that and not as a substituted complaint. Accordingly, none of the previous rulings by Magistrate

Longstaff or by this Court in any way affected plaintiffs' original complaint. The claims asserted in the original complaint are not confined to the two years preceding December 6, 1984.

To avoid the possibility of future confusion, plaintiffs will be directed to file an amended and substituted complaint incorporating all of their remaining claims.

IT IS SO ORDERED.

Signed this 11th day of June, 1986.

/s/ W. C. Stuart, Judge
SOUTHERN DISTRICT OF IOWA

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al.,	)	
	)	CIVIL NO. 83-687-B
Plaintiffs,	)	
vs.	)	
	)	
EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC.,	)	ORDER
	)	
Defendants	)	

Plaintiffs have filed a motion to alter or amend the Court's Order dated October 11, 1985. Having carefully considered plaintiffs' arguments, the Court has determined not to alter or amend its earlier Order. In particular, the Court finds that *Schneider Moving & Storage Company v. Robbins*, 466 U.S. 364 (1984), does not establish, as plaintiffs assert, that this action is more in the nature of a suit under the trust agreements than under the collective bargaining agreement. The fact that the trust agreements require defendant to make contributions according to the terms of the collective bargaining agreement does not make this a suit under the trust agreements. The plain language of the trust agreements —"This Agreement shall in all respects be construed according to and governed by the laws of the State of Illinois. . . ."— suggests that application of Illinois law is limited to the trust agreements and does not extend to the collective bargaining agreement. The Court also finds that, contrary to plaintiffs' assertion, it is not required to give deference to the Trustees' interpretation of the trust agreements. Finally, the Court con-

tinues to believe that the State of Iowa has the most significant relationship to the limitations question and that the two-year statute of Iowa Code § 614.1(8) is the most analogous Iowa statute of limitations.

Plaintiffs also ask the Court to clarify its earlier Order so as to provide that "plaintiffs are entitled to claim $56,011.60 for damages to the Pension Fund and $32,671.59 for damages to the Health and Welfare Fund for unpaid contributions accruing between December 12, 1981, and December 12, 1983, ..." The Court finds that it would be inappropriate to make such a "clarification" at this time and under the present record. The Court will, however, grant plaintiffs' request to clarify that the applicable limitations period is tolled as of December 6, 1984, the date of plaintiffs' proposed "First Amended Complaint."

Finally, the Court agrees with plaintiffs that its Order of October 11, 1985, involves a controlling question of law as to which there is substantial ground for differences of opinion. An immediate appeal from the Order may materially advance the ultimate termination of the litigation. *See* 28 U.S.C. § 1292(b).

IT IS SO ORDERED.

Signed this 6th day of March, 1986.

/s/ W. C. Stuart, Judge
SOUTHERN DISTRICT OF IOWA

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al.,	)	
	)	CIVIL NO. 83-687-B
Plaintiffs,	)	
vs.	)	
	)	
EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC.,	)	MEMORANDUM
	)	
Defendants	)	

This is an action for failure to make contributions to union trust funds. Jurisdiction is premised on the Employee Retirement Income Security Act (ERISA), as amended by the Multi-Employer Pension Plan Amendments Act (MEPPAA), 29 U.S.C. § 1132. Plaintiffs, none of whom are citizens of Iowa, are trustees of the funds. Defendant, d/b/a Ace Lines, Inc., is an Iowa corporation with its principal place of business in Iowa.

This matter comes before the Court on plaintiffs' appeal of an Order by United States Magistrate R. E. Longstaff partially denying plaintiffs' motion to amend their complaint. The issue presented is whether the Magistrate was correct in holding that the claims asserted in Count I of the amended complaint are confined by the two-year statute of limitations contained in § 614.1(8) of the Iowa Code.

Both sides agree that in cases such as this, in which the applicable federal statutes prescribe no limitations period, the Court

ordinarily must borrow "the most closely analogous statute of limitations under state law." *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151, 158 (1983). However, when adoption of state statutes would be at odds with the purpose or operation of federal substantive law, timeliness rules have been drawn from federal law. *Id.*, at 162.

Plaintiffs contend that the appropriate statute of limitations is Illinois' 10-year statute for written contracts. They acknowledge that the Court must apply Iowa choice-of-law rules to determine which State's substantive law should be used. Iowa has adopted the "most significant relationship" analysis for resolving choice-of-law questions. See Restatement (Second) Conflicts of Law. Under § 187 of the Restatement, the law of the state chosen by the parties to govern their contractual rights ordinarily will be applied. The trust agreements, which establish the trust funds and give plaintiffs the authority to enforce defendant's contribution obligations, provide that the agreements "shall in all respects be construed according to and governed by the laws of Illinois." Plaintiffs argue that, in accordance with § 187, Illinois law should provide the limitations period for this action. They maintain that the most analogous Illinois statute of limitations is the 10-year statute for actions on written contracts. Ill. Rev. Stat. Ch. 110 § 13-206.

In response, defendant asserts that the language in the trust agreements requiring resort to Illinois law is of no relevance because the present action is one to enforce the collective bargaining agreements. The latter contain no such language. Defendant further asserts that, because § 187 of the Restatement has no bearing on this matter, a "most significant relationship" analysis results in application of Iowa law. In particular, defendant posits the applicability of Iowa Code § 614.1(8), which establishes a limitations period of two years for actions to recover "wages," defined to include payments to employee benefit funds. Iowa Code § 91A.2(4).

Although plaintiffs' right to institute this lawsuit is derived from ERISA and the Trust Agreements, the gravamen of plaintiffs' complaint is defendant's alleged failure to comply with its obligations under the collective bargaining arguments. Consequently, the Court agrees with defendant that the Illinois law proviso of the trust agreements is inapposite. The Court also agrees that Iowa has the most significant relationship to this action and that the most analagous Iowa statute of limitations is the two-year statute found at § 614.1(8). *Teamsters' Local Union No. 90 v. J.C. White*, 333 N.W.2d 839 (Iowa 1983); *Teamsters Pension Trust Fund v. John Tinney Delivery Service*, 732 F.2d 319, 323 (3rd Cir. 1984). Finally, The Court believes that a two-year limitations period for actions to collect delinquent employee benefit plan contributions is no more too short to comport with congressional policy than a 10-year period would be too long. *See Byrnes v. DeBolt Transfer, Inc.*, 741 F.2d 620 (3rd Cir. 1984).

The Court has considerable foreboding about the financial soundness of trust funds when there is no relationship between payments into the funds and benefits paid from the funds. The Court recognizes that a two-year statute of limitations places added burdens on the trustees, who are charged with enforcing a voluntary payment system but who are restricted in their use of costly annual audits. However, the Court also recognizes the problems created for labor and management when the trustees, who are not parties to the collective bargaining agreements, interpret the agreements in a manner that could result in the imposition of financial burdens not contemplated by the parties at the time the agreements were reached. It would be disruptive of labor peace and anomolous to allow a third-party beneficiary a longer period of time to sue under a collective bargaining agreement than is available to the parties to the contract. Of course, if fraud is involved, the trustees would not be confined to the two-year period of limitations.

There remains the question of whether plaintiffs' amended complaint should relate back to the date this action was originally filed. Defendant contends that there should be no relation back because, while plaintiffs' initial complaint was concerned merely with the accuracy of defendant's recordkeeping, the amended complaint alleges that a substantial group of employees was improperly excluded from coverage under the benefit plans. This, defendant urges, makes plaintiffs' new complaint essentially a new lawsuit. Again, the Court is constrained to agree with defendant. Under Rule 15(c) of the Federal Rule of Civil Procedure, a claim in an amended pleading will relate back to the date of the original pleading if the claim arose out of the same conduct, transaction, or occurrence. Here, although both the original and amended complaints allege noncompliance with the contribution requirements of the employee benefit plans, the Court is unwilling to say that defendant had fair notice of plaintiffs' claim for expanded coverage. The amount sought by plaintiff as relief soared from approximately $88,500 to $1.15 million. Part of this increase is attributable to an ERISA penalty provision that effectively rewards plaintiffs for their delay in filing the amended complaint. See 29 U.S.C. § 1132(g)(2). Under the circumstances, the Court will restrict plaintiffs' claim in Count 1 to losses incurred no earlier than two years before filing of the amended complaint.

Except as thus modified the Magistrate's Order of January 23, 1985, is affirmed.

IT IS SO ORDERED.

Signed this 11th day of October, 1985.

/s/ W. C. Stuart, Judge
SOUTHERN DISTRICT OF IOWA

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al., Plaintiffs, vs. EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC., Defendants	CIVIL NO. 83-687-B MOTION FOR LEAVE TO AMEND COMPLAINT AND FOR EXTENSION OF DEADLINES

COMES NOW the Plaintiffs, and move the Court for leave to file their first amended complaint; for an order extending deadlines for pleadings, discovery, witnesses, and motions; and scheduling a pretrial conference. In support of their motion, Plaintiffs state:

1. This action was filed on December 12, 1983, and answered on or about January 26, 1984.

2. A Scheduling Conference Order was issued on March 23, 1984 establishing a pleading and discovery deadline of November 1, 1984.

3. After the Scheduling Conference Order, pursuant to an agreement of the parties, the parties agreed that the Plaintiffs' auditors would conduct an audit of the records of the Defendant and attempt to resolve the dispute through settlement.

4. During the course of the audit, many factual issues were

resolved; however, several interpretative issues arose which have lead to substantial disputes between the parties.

5. Prior to the November 1, 1984 deadline, counsel for Plaintiffs telephoned Magistrate Longstaff and indicated that the audit was nearly complete, and orally requested that the deadlines be postponed until the results of the audit were obtained by the parties. Counsel for Plaintiffs reported this conversation to counsel for Defendants.

6. On November 7, 1984, the Plaintiffs' auditors, counsel for Plaintiffs, representatives of the Defendant, and counsel for Defendant met and discussed the results of the audit. Among other documents, a form entitled "Preliminary Debt Audit Adjustments" was discussed. This form indicated that the Defendant in fact owed the Central States Southeast and Southwest Areas Pension and Health and Welfare Funds approximately $1 million. A copy of this schedule is attached hereto. [Not included in this Appendix]

7. Plaintiffs' auditors indicated that the Defendant could have thirty (30) days to present evidence to the Plaintiffs' trust funds disputing these amounts.

8. Unless this dispute is resolved within thirty (30) days, Plaintiffs request leave to amend their Complaint to reflect additional amounts claimed from Defendant. If such leave is granted, counsel for Plaintiffs believes that the Court should set a pre-trial conference for the purpose of establishing new deadlines.

9. The amounts uncovered during the audit are substantial, and would have a material impact on the ability of the Plaintiffs' trust funds to pay pension and health and welfare benefits to participants in the funds. Plaintiffs were not aware of these additional claims until the audit was performed.

10. In light of the policy that amendments should be freely allowed, Plaintiffs believe that substantial justice requires that their Motion for Leave to Amend Complaint be granted.

WHEREFORE, Plaintiffs pray that their Motion for Leave to Amend Complaint be granted; that they be allowed forty-five (45) days within which to file such amendment; and that the Court set a pre-trial conference for the purpose of establishing new deadlines.

ADAMS, HOWE & ZOSS, P.C.
/s/ Paul A. Zoss
620 Hubbell Building
Des Moines, IA 50309
Telephone: (515) 244-2329

ATTORNEYS FOR PLAINTIFFS

Copy to:

David H. Goldman
Black, Reimer & Goldman
550 39th Street, Suite 300
Des Moines, IA 50312

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al., Plaintiffs, vs. EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC., Defendants	)	CIVIL NO. 83-687-B AFFIDAVIT

STATE OF IOWA)
) ss.
COUNTY OF POLK)

I, Paul A. Zoss, upon oath do state:

1. That I have at all times been attorney of record for the Plaintiffs herein.

2. On November 7, 1984, I attended a meeting at the Defendant's business office with officials representing the Plaintiffs and the Defendant and with David Goldman, attorney for the Defendant. At the meeting, a copy of the document attached to Plaintiff's Motion For Leave to Amend the Complaint and For Extension of Deadlines was distributed. That document contains the results of an audit of the Defendant's books and records conducted by Plaintiff's auditors in 1984.

3. On November 8, 1984, I prepared and caused to be filed the Motion for Leave to Amend the Complaint and for Extensions of Deadlines. A copy of the proposed First Amended Com-

plaint was not attached to the Motion because extensive investigation and research was necessary before the First Amended Complaint could be prepared.

4. On December 6, 1984, I delivered a copy of the First Amended Complaint to the Office of the Clerk of the United States District Court for the Southern District of Iowa. The Clerk would not file the First Amended Complaint because leave of Court had not been granted, but indicated that the First Amended Complaint would be delivered to the Magistrate. The Magistrate acknowledged receipt of the proposed First Amended Complaint in an Order dated December 13, 1984.

5. Attached to this Affidavit is a genuine, true and accurate copy of the proposed First Amended Complaint delivered to the Clerk's office on December 6, 1984.

/s/ Paul A. Zoss

Subscribed and sworn to before me on this 21st day of October, 1985.

/s/ Cindy Hughes
Notary Public, State of Iowa

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, MARION M. WINSTEAD, HAROLD J. YATES, EARL L. JENNINGS, JR., HOWARD McDOUGALL, ROBERT J. BAKER, R. V. PULLIAM, SR., and ARTHUR H. BUNTE, JR., Trustees of the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,	)	Civil No. 83-687-B
Plaintiffs,	)	
vs.	)	[PROPOSED] FIRST AMENDED COMPLAINT
EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC., ACE ALKIRE FREIGHT LINES, COMPANY TRUCK DIVISION, and SUNSET DIVISION,	)	
Defendant.	)	

COMES NOW the Plaintiffs, by their attorney, Adams, Howe & Zoss, P.C., and for their cause of action against the Defendant states:

COUNT I

1. Plaintiffs are trustees of the Central States, Southeast and Southwest Areas Pension Fund (hereinafter referred to as "Pension Fund") and of the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter referred to as "Health and Welfare Fund"), which are, individually, multi-

employer employee benefit plans within the meaning of § 3(1), (2), (3), and (37), § 502 and § 515 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MEPPAA) [29 USC § 2002(1) [sic], (2), (3), and (37), § 1132 and § 306, PL 96-364], and bring this action on behalf of themselves, the participants and the beneficiaries of these plans.

2. The Defendant, Easter Enterprises, Inc., d/b/a Ace Lines, Inc., Ace Alkire Freight Lines, Company Truck Division, Sunrise Division and Sunset Division, is an Iowa corporation with its principal place of business in the State of Iowa, and is engaged in the business of transporting goods in interstate commerce as a common carrier.

3. Jurisdiction of this Court is founded upon § 301(a) of the Labor Management Relations Act of 1947, as amended [29 USC § 185(a)]; § 502 of ERISA [29 USC § 1132]; and § 306 of MEPPAA in that Plaintiffs are aggrieved by the Defendant's failure to honor and continued refusal to comply with certain terms of collective bargaining agreements to which it is bound as well as the trust plans and trust agreements of the Pension Fund and the Health and Welfare Fund, in violation of Federal law and of the laws of the State of Iowa. The matter in controversy is between a Defendant who is a citizen of the State of Iowa and the Plaintiffs who are all citizens of states other than the State of Iowa.

4. Defendant is an employer and a party in interest in an industry affecting commerce within the meaning of § 3(5), (11), (12), and (14) of ERISA [29 USC § 1002(5), (11), (12), and (14)], § 3 of MEPPAA and the Labor Management Relations Act of 1947 (29 USC § 151 *et seq.*).

5. At all times relevant hereto, the Defendant was a party to and agreed to abide by the terms of collective bargaining agreements between itself and various locals of the International

Brotherhood of Teamsters, Chauffeurs, Warehousers and Helpers of America (hereinafter referred to as "Teamster" locals), which are labor organizations that represent, for purposes of collective bargaining, certain employees of Defendant and employees of other employers in industries affecting interstate commerce within the meaning of § 2(5), § 9(a), and § 301(a) of the Labor Management Relations Act of 1947, as amended [29 USC § 151 *et seq.*].

6. In 1976, Defendant and Teamster Local No. 147 executed or became bound by the terms of the National Master Freight Agreement, the Central States Area Over-the-Road Motor Freight Supplemental Agreement, and the Central States Area Local Cartage Supplemental Agreement, all covering the period April 1, 1976 through March 31, 1979.

7. On or about February 10, 1977, R. R. Wynant, Vice President and authorized agent of Defendant, and Charles T. Madden, Secretary-Treasurer and authorized agent of Teamster Local No. 544, executed the National Master Freight Agreement, the Central States Area Over-the-Road Motor Freight Supplemental Agreement and the Central States Area Local Cartage Supplemental Agreement, all covering the period April 1, 1976 through March 31, 1979. Genuine copies of the signature pages of these Agreements are attached hereto as Exhibit "A".

8. The 1976 to 1979 National Master Freight Agreement required, in Article 2, Section 5, that any riders to the Agreement be submitted to the Conference Joint Area Committee for approval.

9. No riders to the National Master Freight Agreement for the period April 1, 1976 through March 31, 1979 were submitted by the Defendant to the Conference Joint Area Committee for approval under the provisions of Article 2, Section 5 of the National Master Freight Agreement, nor did the Committee approve any riders applicable to Defendant.

10. For certain of its employees covered by the 1976 to 1979 National Master Freight Agreement, Defendant failed to make contributions or made substandard contributions to the Pension Fund or to the Health and Welfare Fund.

11. On or about January 8, 1980, Richard Easter, President and authorized agent of Defendant, and Vernon Bennett, President and authorized agent of Teamster Local No. 147, executed the National Master Freight Agreement, the Central States Area Over-the-Road Motor Freight Supplemental Agreement and the Central States Area Local Cartage Supplemental Agreement, all covering the period April 1, 1979 through March 31, 1982. Genuine copies of the signature pages of these Agreements are attached hereto as Exhibit "B".

12. On or about December 18, 1979, Richard Easter, President and authorized agent of Defendant, and Charles T. Madden, Secretary-Treasurer and authorized agent of Teamster Local No. 544, executed the National Master Freight Agreement, the Central States Area Over-the-Road Motor Freight Supplemental Agreement and the Central States Area Local Cartage Supplemental Agreement, all covering the period April 1, 1979 through March 31, 1982. Genuine copies of the signature pages of these Agreements are attached hereto as Exhibit "C".

13. The following provisions are included within the 1979 to 1982 National Master Freight Agreement:

> "ARTICLE 1. *Parties to the Agreement.*
>
> Section 1. *Employers Covered.* The Employer consists of Associations, members of Associations who have given their authorization to the Associations to represent them in the negotiation and/or execution of this Agreement and Supplemental Agreements, and *individual Employers who become signatory to this Agree-*

ment and Supplemental Agreements as hereinafter set forth . . . . (Emphasis supplied)

"ARTICLE 2. *Scope of Agreement.*

Section 1. *Master Agreement.* The execution of this National Master Freight Agreement on the part of the Employer shall cover all operations of the Employer which are covered by this Agreement, and shall have application to work performed within the classifications defined and set forth in the Agreements supplemental hereto.

Section 2. *Supplements to Master Agreement.*

(a) There are several segments of the trucking industry covered by this Agreement and for this reason Supplemental Agreements are provided for each of the specific types of work performed by the various classifications of employees controlled by this Master Agreement.

All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as "Supplemental Agreements".

* * *

(d) The jurisdiction covered by the National Master Freight Agreement and its various Supplements thereto includes, without limitation, stuffing, stripping, loading and discharging of cargo or containers. . . .

* * *

Section 3.Non-covered Units.

* * *

(b) *Additions to Operations-Over-The-Road and Local Cartage Supplemental Agreement.* Notwithstanding the foregoing paragraph, the provisions of the National Master Freight Areement and the applicable over-the-road and local cartage Supplemental Agreements shall be applied, without evidence of Union representation of the employees involved, to all subsequent additions to, and extensions of, current operations which adjoin and are utilized as part of such current operation.

* * *

Section 4. *Single Bargaining Unit.* The employees, unions, employers and associations covered under this Master Agreement and the various Supplements thereto shall constitute one bargaining unit and contract. It is understood that the printing of this Master Agreement and the aforesaid Supplements in separate Agreements is for convenience only and is not intended to create separate bargaining units.

This National Master Agreement applies to city and road operations, and other classifications of employment authorized by the signatory employers to be represented by Trucking Management, Inc. and by other employers and Associations participating in national collective bargaining. The common problems and interests, with respect to basic terms and conditions of employment, have resulted in the creation of the National Master Freight Agreement and the respective Supplement.

Section 5. *Riders.* Riders to this Agreement providing for better wages, hours, and working conditions for employees which have been negotiated by Local Unions and Employers affected and put into effect, shall

be continued, and shall be improved wherever required by the 1979 amendments to this Agreement except as to those better Riders which by agreement of the parties are subject to mutual agreement and adjustment on the supplemental area level. Riders, as improved, shall be submitted to the Conference Joint Area Committee for approval. If the parties cannot agree on the terms of such Rider, the Conference Joint Area Committee may establish such terms.

No new Riders to this Agreement shall be negotiated unless approved by the Conference Joint Area Committee, if confined to that Conference Area, or by the National Grievance Committee if applicable to more than one Conference Area.

Riders to this Agreement and to Supplements thereto between Local Unions and Employers that do not meet the standards set forth in the National Master Agreement and Supplements thereto, shall be continued pending negotiations for amendment of such Riders which negotiations shall be conducted and concluded within ninety (90) days after May 18, 1979. In the event no agreement is concluded, the matter shall be referred during such period to the Conference Joint Area Committee, if confined to the Conference Area, or to the National Grievance Committee if applicable to more than one Conference Area, for final disposition. Any substandard Riders not submitted, or submitted and not approved, shall be null and void.

The Conference Joint Area Committee or the National Grievance Committee as provided shall resolve all disputes on Riders or Supplements by either establishing the terms of such Riders or by modifying them completely. However, wage and monetary mat-

ters negotiated in this Agreement shall become effective April 1, 1979.

ARTICLE 3. *Recognition, Union Shop and Check-Off.*

* * *

Section 2. *Probationary and Casual Employees.* A new employee shall work under the provisions of this Agreement but shall be employed only on a thirty-day trial basis, during which period he may be discharged without further recourse; provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. The Union and the Employer may agree to extend the probationary period for no more thirty (30) days but the probationary employee must agree to such extension in writing.

After thirty days, the employee shall be placed on the regular seniority list. In case of discipline within the thirty-day period, the Employer shall notify the Local Union in writing.

Any employee hired as a casual or part-time worker shall not become a seniority employee under these provisions where it has been agreed by Employer and Union that he was hired for casual or part-time work. The words "casual" or "part-time" as used herein are meant to cover situations such as replacement for absenteeism.

Any employee hired as a casual or part-time worker shall not become a seniority employee until he meets the requirements of the appropriate Supplemental Agreement under which he is employed.

ARTICLE 6.

* * *

Section 2. *Extra Contract Agreements.* The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

ARTICLE 22.

* * *

Section 2.[An owner operator's] compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

* * *

ARTICLE 32. *Subcontracting.*

Section 1. For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services of the kind, nature or type covered by, presently performed, or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other plant, person or nonunit employees, unless otherwise provided in this Agreement.

The Employer may subcontract work when all of his regular employees are working, except that in no event shall road work presently performed or runs established during the life of this Agreement be farmed out. No dock work shall be farmed out except for existing situa-

tions established by agreed to past practices. Overflow loads may be delivered by drivers other than the Employer's employees provided that this shall not be used as a subterfuge to violate the provisions of this Agreement. Loads may also be delivered by other agreed to methods or as presently agreed to. Owner-Operators performing subcontracted work which is permitted herein shall receive no less than the wages, hours and general working conditions of this Agreement and the applicable Supplement.

The normal, orderly interlining of freight for peddle on occasional basis, where there are parallel rights, and when not for the purpose of evading this Agreement may be continued as has been permitted by past practice providing it is not being done to defeat the provisions of this Agreement.

The interlining of freight or a division or tariff, for any purpose, including local cartage, dock, hostling and delivery is included within the term subcontracting as used in this Article and may be continued as has been permitted by past practice providing it is not being done to defeat the provisions of this Agreement.

In the event that an Employer signatory to this agreement utilizes personnel on a regular basis which has been supplied by a labor contractor, as such to perform subcontracted work permitted by this Agreement, such personnel shall receive the wages, hours and general working conditioins provided herein.

Section 2. Within five (5) working days of filing of grievance claiming violation of this Article, the parties to this Agreement shall proceed to the final step

of the grievance procedure, without taking any intermediate steps, any other provision of this Agreement to the contrary notwithstanding.

ARTICLE 33. *Cost-of-Living*

All employees subject to this Agreement shall be covered by the provisions of a cost-of-living allowance, as set forth in this Article.

* * *

ARTICLE 39. *Duration.*

Section 1. The Agreement shall be in full force and effect from April 1, 1979, to and including March 31, 1982, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

Section 2. Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to March 31, 1982 or March 31st of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

Section 3. Revisions agreed upon or ordered shall be effective as of April 1, 1982 or April 1st of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree therein.

Section 4. In the event of an inadvertent failure by either party to give the notice set forth in Sections 1 and 2 of this Article, such party may give such notice at any time prior to the termination or automatic renewal date of this Agreement. If a notice is given in accordance with the provisions of this Section, the expiration date of this Agreement shall be the sixty-first (61st) day following such notice."

14. The Central States Area Over-the-Road Motor Freight Supplemental Agreement for April 1, 1979 through March 31, 1982 contains the following provisions:

ARTICLE 65. *Health and Welfare Benefits*

Effective April 1, 1979, the Employer shall contribute to a fund, which is to be administered jointly by the parties, the sum of $33.50 per week for each employee covered by this Agreement who has been on the payroll thirty (30) days or more.

Effective April 1, 1980, the weekly contribution shall be increased to $36.50.

Effective April 1, 1981, the weekly contribution shall be increased to $39.50.

By the execution of this Agreement, the Employer authorizes the Employers' Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by Trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks.

If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Health and Welfare Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Health and Welfare Fund, regardless of whether the equipment rental is at the minimum rate or more, and regardless of the manner of computation of owner-operator compensation.

Contributions to the Health and Welfare Fund must be made for each week of each regular employee, even though such employee may work only part-time under the provisions of this Agreement, including weeks where work is performed for the Employer but not under the provisions of this Agreement, and although contributions may be made for those weeks into some other Health and Welfare Fund.

Contributions shall be made for any regular employee on lay-off who is worked one (1) day in any week for any reason.

If any employee on the seniority list is worked a day in any work week either as a replacement or supplemental employee, the Employer shall pay the full weekly contribution for that work week.

Employers presently making payments to the Central States, Southeast and Southwest Areas Health and Welfare Fund, and Employers who may subsequently begin to make payments to such Fund, shall continue to make such payments for the life of this Agreement. Action on delinquent contributions may be instituted by either the Local Union, the Area Conference, or the Trustees. Employers who are delinquent must also pay all attorneys' fees and costs of collection.

ARTICLE 66. Pensions

Effective April 1, 1979, the Employer shall contribute to the CENTRAL STATES, SOUTHEAST and SOUTHWEST AREAS PENSION FUND the sum of Forty One Dollars ($41.00) per week for each employee covered by this Agreement who has been on the payroll thirty (30) days or more. Effective April 1, 1980, the weekly contributions shall be increased to Forty Six dollars ($46.00). Effective April 1, 1981, the weekly contribution shall be increased to Fifty One dollars ($51.00).

This fund shall be the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND. There shall be no other pension fund under this Agreement for operations under this Agreement or for operations under the Southern Conference Area Agreements to which Employers who are party to this Agreement are also parties.

By the execution of this Agreement, the Employer authorizes the Employer's Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months.

If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Pension Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Pension Fund, regardless of whether the equipment rental is at the minimum rate or more, and regardless of the manner of computation of owner-operator compensation.

Contributions to the Pension Fund must be made for each week on each regular employee, even though such employee may work only part-time under the provisions of this Agreement, including

weeks where work is performed for the Employer but not under the provisions of this Agreement, and although contributions may be made for those weeks into some other pension fund. Contributions shall be made for any regular Employee on layoff who is worked one (1) day in any week for any reason.

If any employee on the seniority list is worked a day in any work week either as a replacement or supplemental employee, the Employee shall pay the full weekly contribution for that work week.

Effective April 1, 1979, the Employer shall contribute to the Central States, Southeast, and Southwest Areas Pension Fund the sum of eight dollars ($8.00) for each tour of duty worked by each casual and/or probationary employee, until such time as such employee accrues seniority in accordance with the contract.

Action for delinquent contributions may be instituted by either the Local Union, the Area Conference or the Trustees. Employers who are delinquent must all pay all attorneys' fees and costs of collection.

15. The Central States Area Local Cartage Supplemental Agreement for April 1, 1979 through March 31, 1982 contains the following provisions:

ARTICLE 54. *Health and Welfare Benefits*

Effective April 1, 1979, the Employer shall contribute to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND, which is to be administered jointly by the parites, the sum of thirty-three dollars and fifty cents ($33.50) per week for each employee

covered by this Agreement who has been on the payroll thirty (30) days or more. Effective April 1, 1980, the weekly contribution shall be increased to thirty-six dollars and fifty cents ($36.50). Effective April 1, 1981, the weekly contribution shall be increased to thirty-nine dollars and fifty cents ($39.50).

Employers presently making payments to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND and Employers who may subsequently begin to make payments to such Fund, shall continue to make such payments for the life of this Agreement.

By the execution of this Agreement, the Employer authorizes the Employers' Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required con-

tributions into the Health and Welfare Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Health and Welfare Fund, regardless of whether the equipment rental is at the minimum rate or more, and regardless of the manner of computation of owner-operator compensation.

Contributions to the Health and Welfare Fund must be made for each week on each regular employee even though such employee may work only part time under the provisions of this Agreement, including weeks where work is performed for the Employer but not under the provisions of this Agreement,and although contributions may be made for those weeks into some other health and welfare fund.

If any employee on the seniority list is worked a day in any work week either as a replacement or supplemental employee, the Employer shall pay the full weekly contribution for that work week.

Contributions shall be made for any regular employee on layoff who is worked one (1) day in any week for any reason.

Action for delinquent contributions may be instituted by either the Local Union, the Area Conference or the Trustees.

Employers who are delinquent must also pay all attorney's fees and costs of collections.

ARTICLE 55. *Pensions*

Effective April 1, 1979, the Employer shall contribute to the CENTRAL STATES, SOUTHEAST and SOUTHWEST AREAS PENSION FUND the sum of forty-one dollars ($41.00) per week for each employee covered by this Agreement who has been on the payroll thirty (30) days or more. Effective April 1, 1980, the weekly contributions shall be increased to forty-six ($46.00) dollars per week. Effective April 1, 1981, the weekly contribution shall be increased to fifty-one dollars ($51.00)

This fund shall be the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND. There shall be no other pension fund under this Agreement for operations under this Agreement or for operations under the Southern Conference Areas Agreements to which Employers who are party to this agreement are also parties.

By the execution of this Agreement, the Employer authorizes the Employer's Associations which are parties hereto to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such Trustees within the scope of their authority.

If the employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks. If an employee is injured on the job, the Employer shall continue to pay the required contributions un-

til such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months.

If any employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Pension Fund during the period of absence.

There shall be no deduction from equipment rental of owner-operators by virtue of the contributions made to the Pension Fund, regardless of whether the equipment rental is at the minimum rate of more, and regardless of the manner of computation of owner-operator compensation.

Contributions to the Pension Fund must be made for each week, on each regular employee, even though such employees may work only part-time under the provisions of this Agreement, including weeks where work is performed for the Employer but not under the provisions of this Agreement, and although contributions may be made for those weeks into some other pension fund. Contributions shall be made for any regular Employee on lay-off who is worked one (1) day in any week for any reason.

If any employee on the seniority list is worked a day in any work week either as a replacement or supplemental employee, the Employer shall pay the full weekly contribution for that work week.

Effective April 1, 1979, the Employer shall contribute to the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND the

> sum of eight dollars ($8.00) for each tour of duty worked by each casual and/or probationary employee, until such time as such employee accrues seniority in accordance with the contract. Action for delinquent contributions may be instituted by either the Local Union, the Area Conference or the Trustees. Employers who are delinquent must also pay all attorney's fees and costs of collection.

16. The Employer's Associations which were parties to the 1979 to 1982 National Master Freight Agreement entered into the Trust Agreements establishing the Pension Fund and the Health and Welfare Fund, as authorized by the Supplements to the National Master Freight Agreement, and thereby ratified all actions already taken or actions taken thereafter by the Trustees within the scope of their authority.

17. On August 23, 1979, Local 147 and Defendant executed a document identified as a "rider" to the "National Master Freight Agreement Central States Over-the-Road Supplement" for Defendant's "Company Truck Division". A genuine copy of the "rider" is attached hereto as Exhibit "D" and incorporated herein.

18. The following terms were contained within this document:

> "2. Employees covered by this Rider will receive the same Health and Welfare contributions as provided for in the National Master Freight Agreement.
>
> 3. A Pension program will be established by the company with "Summit National Life Insurance Company" to provide for Life Insurance and a vested pension fund."

19. On September 26, 1979, Local 147 and Defendant executed a document identified as a "rider" to the "National Master Freight Agreement Central States Over-the-Road Supplement" for Defendant's owner-operators hired before April 1, 1979. A genuine copy of the "rider" is attached hereto as Exhibit "E" and incorporated herein.

20. The following term was contained within this document:

> "4. The Company agrees to make Health and Welfare and Pension contributions for each eligible employee upon completion of a sixty (60) day trial period according to the terms of the National Master Freight Agreement."

21. On September 26, 1979, Local 147 and Defendant executed a document identified as a "rider" to the "National Master Freight Agreement Central States Over-the-Road Supplement" for Defendant's "Sunrise Division" (i.e. owner-operators hired on or after April 1, 1979). A genuine copy of the "rider" is attached hereto as Exhibit "F" and incorporated herein.

22. The following term was contained within this document:

> "4. The Company agrees to make Health and Welfare contributions according to the National Master Freight Agreement after 60 day trial period. Pension will be the Company selected Pension Program."

23. On or about September 26, 1979, the Defendant and Local 147 entered into a "cartage agreement", a genuine copy of which is attached hereto as Exhibit "G" and incorporated herein, covering the period April 1, 1979 through March 31, 1982 which contained the following provision:

"CITY MEN — Health and Welfare and Pension benefits will be paid on city men as herein listed when they appear on the Union check-off list:

Kansas City	- 3 -	Sidney Clark
		Orville Burnworth
		Mike Boltz
Des Moines	- 1 -	Reed Erickson
Ft. Dodge	- 2 -	Robert Hagen
		Edward Mosbach"

24. Neither Exhibits "D", "E", "F", or "G", nor any other riders to the National Master Freight Agreement effective during the period April 1, 1979 to March 31, 1982, were ever approved or submitted for approval by the Conference Joint Area Committee under the provisions of Article 2, Section 5 of the National Master Freight Agreement.

25. Exhibits "D", "E", "F", and "G" violate the terms of Special Bulletin 20 issued by Plaintiffs in October, 1977, which prohibited differentiation among covered employees based on length of service, seniority or employment commencement date. A genuine copy of Special Bulletin 20 is attached hereto as Exhibit "H".

26. Exhibits "D", "E", "F", and "G" violate the terms of Special Bulletin 11 issued by the Plaintiffs in September, 1980, which prohibited the exclusion of any member of the collective bargaining unit from participation in the Pension Plan on an equal basis. A genuine copy of Special Bulletin 11 is attached hereto as Exhibit "I".

27. Exhibits "D", "E", "F" and "G" are null and void under Article 2, Section 5 and under Article 6, Section 2 of the National Master Freight Agreement.

28. By executing the 1976 to 1979 and the 1979 to 1982 National Master Freight Agreements, Defendant became a member of a national bargaining unit.

29. Defendant did not withdraw from the national bargaining unit.

30. Defendant gave no notice under Article 39 of the 1979 to 1982 National Master Freight Agreement that it desired to cancel its participation in that agreement.

31. At all times since April 1, 1976, the Defendant has been bound by executed collective bargaining agreements to make contributions to the Pension Fund and Health and Welfare Fund at the rates established in the applicable Supplements to the National Master Freight Agreement for all of its covered employees, including company over-the road drivers, owner-operators and local cartage drivers.

32. At all times since April 1, 1976, the Defendant has agreed to be bound by the terms and conditions set forth in the Central States Trust Agreement, pursuant to which the Pension Fund and the Health and Welfare Fund have been established and are maintained in accordance with § 302 of the Labor Management Relations Act of 1947 [29 USC 186] and §§ 402 and 403 of ERISA [29 USC 1102, 1103]. A copy of the Trust Agreement for the Pension Fund is attached hereto as Exhibit "J", and a copy of the Trust Agreement for the Health and Welfare Fund is attached hereto as Exhibit "K".

33. Defendant executed a participation agreement with Teamster Local No. 544 covering the period April 1, 1979 to March 31, 1982, whereby it agreed to make timely payments to Plaintiffs' Trust Funds, to be bound by the terms, conditions, rules and regulations governing Plaintiffs' Trust Funds and Trust Plans, and to designate as its representatives

such Trustees as are named in the Trust Agreements together with their successors. A genuine copy of the participation agreement is attached hereto as Exhibit "L".

34. Since April 1, 1976, Defendant has made contributions to the Pension Fund or to the Health and Welfare Fund for certain of its covered employees at rates below those rates established by the National Master Freight Agreement, and for other covered employees Defendant has made no contributions to the Pension Fund or to the Health and Welfare Fund.

35. Defendant was bound and continues to be bound by the terms of the National Master Freight Agreement covering the period April 1, 1982 through March 31, 1985, and by the Central States Supplements to that Agreement for Over-the-Road Motor Freight and Local Cartage, to make contributions to the Pension Fund and to the Health and Welfare Fund for its covered employees. In the alternative, from and after April 1, 1982, Defendant has continued to be bound by the National Master Freight Agreement covering the period April 1, 1979 through March 31, 1982, and by the Central States Supplements for Over-the-Road Motor Freight and Local Cartage, under Article 39 of the National Master Freight Agreement.

36. Defendant has failed to perform its obligations under the terms and conditions of the Pension Trust Fund Agreement and the Health and Welfare Fund Trust Agreement.

37. § 306(a) of the MEPPAA, adding § 515 to ERISA, provides:

> "Section 515. Every employer who is obligated to make contributions to a multi-employer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not

inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement."

40. Plaintiff's Pension Trust Agreement, as amended, provides, *inter alia*, pursuant to Article XIV, Section 4, and Plaintiff's Health and Welfare Trust Agreement, as amended, provides, *inter alia*, pursuant to Article XI, Section 4, that:

"Sec. 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer shall be obligated to pay interest on the moneys due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including, but not limited to, attorneys' fees and such fees for late payment as the Trustees determine and as permitted by law. The interest payable by an Employer in accordance with the preceding sentence, shall be computed and charged to the Employer at the prime interest rate established by the Chase Manhattan Bank (New York, New York) for the fifteenth day (15th) day of the month for which the interest is charged. *Any judgment against an Employer entered on and after September 26, 1980, for contributions owed to this Fund shall include a mandate of the court the greater of (a) a doubling of the interest computed and charged in accordance with this section or (b) liquidated damages based on the unpaid contributions only (exclusive of interest) as determined by the court in the amount of 20% in accordance with the Multi-employer Pension Plan Amendments Act of 1980, the Employee*

Retirement Income Security Act, 29 U.S.C. 1132(g)(2)(C)(i) and (ii).''

39. § 502(g)(2)of ERISA, as amended by MEPPAA § 306(b)(2), provides:

> (2) In any action under this title by a fiduciary for or on behalf of a plan to enforce section 515 in which a judgment in favor of the plan is awarded, the court shall award the plan —
>
> (A) the unpaid contributions,
>
> (B) interest on the unpaid contributions,
>
> (C) an amount equal to the greater of —
>
> (i) interest on the unpaid contributions, or
>
> (ii) liquidated damages provided for under the Plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
>
> (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
>
> (E) such other legal or equitable relief as the court deems appropriate.
>
> For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1954.

40. Pursuant to the above-cited statutory and Trust Agreement provisions, Defendant is indebted to Pension Fund and

the Health and Welfare Fund for such sums as may be found to be due and owing from Defendant to Plaintiffs for delinquent contributions, interest thereon at the rate specified in the Trust Agreements, an additional amount equal to the interest on unpaid contributions, attorney fees, costs of this action, and other expenses of collection incurred by the Plaintiffs.

41. Despite demands that Defendant perform its statutory and contractual obligations with respect to making contributions to Plaintiffs' Trust Funds, Defendant has failed, neglected, omitted and refused to make said payments. Defendant owes to the Central States, Southeast and Southwest Areas Pension Fund at least $1,040,000.00 for unpaid contributions through December 31, 1983, together with accumulated interest, and owes to Central States, Southeast and Southwest Areas Health and Welfare Fund at least $110,000.00 for unpaid contributions through December 31, 1983, together with accumulated interest.

42. Plaintiffs have no adequate remedy at law for Defendant's refusal to comply with the terms, conditions, rules, and regulations governing Plaintiff's Trust Funds from and after December 31, 1983; and, unless the Defendant is enjoined from breaching and continuing to breach the terms of the collective bargaining agreements as well as the Trust Plans and Trust Agreements and mandatorily compelled to comply with said documents, Plaintiffs and their Trustees will suffer irreparable harm.

43. The Defendant continues to refuse to comply with the terms of the collective bargaining agreements as well as the Trust Plans and Trust Agreements, thus continuing to create additional delinquencies. The Pension Fund and the Health and Welfare Fund may be required to continue to provide benefits for the Defendant's employees, as they have in the past, even

though the Defendant has not made the required contributions to fund those benefits, thereby creating the risk that the assets of the Trust Funds will be inadequate to provide benefits for employees of other employers who are making the required contributions.

WHEREFORE, Plaintiffs pray for the following relief:

1. A permanent injunction upon hearing of this cause, enjoining the Defendant from violating the terms of the statutes, the collective bargaining agreements, the Trust Plans and the Trust Agreements, and requiring Defendant to remit its contributions to Plaintiffs on a timely basis.

2. A judgment on behalf of Plaintiff, Central States and Southeast and Southwest Areas Pension Fund in the sum of $1,040,000.00 for unpaid contributions through December 31, 1983, together with accumulated interest, and a judgment on behalf of Plaintiff, Central States Southeast and Southwest Areas Health and Welfare Fund in the sum of $110,000.00 for unpaid contributions through December 31, 1983, together with accumulated interest, and interest thereon at the rate specified in the Trust Agreements thereafter, an additional amount equal to accumulated interest on the unpaid contributions, liquidated damages, attorney's fees and the costs of this action.

3. A declaration by the Court that the Defendant is liable to the Plaintiffs for unpaid pension and health and welfare contributions from and after January 1, 1984 for its employees covered by the National Master Freight Agreement, and for further necessary or proper relief to compel Defendant to make proper contributions to Plaintiffs for such employees.

4. A declaration by the Court that Defendant's trip lessors are Defendant's employees rather than subcontractors under Article 32 of the National Master Freight and that the Defen-

dant is liable to Plaintiffs for unpaid pension and health and welfare contributions from and after April 1, 1976 for all such employees covered by the National Master Freight Agreement, and for further necessary or proper relief to compel Defendant to make proper contributions to Plaintiffs for such employees in addition to the amounts prayed for in this Court.

5. That the Court retain jurisdiction of this cause pending compliance with its Orders.

6. For such other, further or different relief as the Court may deem just and proper.

COUNT II

1. Plaintiffs are Trustees of the Central States Southeast and Southwest Areas Pension Fund (hereinafter referred to as "Pension Fund"), which is a multi-employer employee benefit plan within the meaning of § 3(1), (2), (3), and (37), § 502 and § 515 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MEPPAA) [29 USC § 2002(1), (2), (3) and (37), § 1132 and § 306, PL 96-364], and bring this action on behalf of themselves, the participants and the beneficiaries of this plan.

2. Plaintiffs incorporate by reference and replead herein paragraphs 2 through 33, inclusive, and paragraphs 36 through 39, inclusive, of Count I.

3. On April 1, 1982, the Defendant initiatied a statutory "complete withdrawal" from Plaintiffs' Pension Fund, as defined in ERISA § 4203 (29 USC § 1383), or a "partial withdrawal" from Plaintiffs' Pension Fund, as defined in ERISA § 4205 [29 USC § 1385].

WHEREFORE, Plaintiffs pray for the following relief:

1. A declaration by the Court that Defendant's actions on or about April 1, 1982 constituted a total withdrawal or, alternatively, a partial withdrawal from Plaintiffs' Pension Fund, thereby triggering withdrawal liability under 29 USC § 1381, et. seq.. and for further necessary and proper relief to compel Defendant to satisfy its withdrawal liability.

2. That the Court grant Plaintiffs further and necessary proper relief under 28 USC § 2202.

3. That the Court award to Plaintiffs attorneys fees and the costs of this action.

4. That the Court retain jurisdiction of this cause pending compliance with its Orders.

5. For such other, further or different relief as the Court may deem just and proper.

ADAMS, HOWE & ZOSS, P.C.

By /s/ Paul A. Zoss
620 Hubbell Building
Des Moines, IA 50309
Telephone: (515) 246-1400

ATTORNEYS FOR PLAINTIFFS

Copy to:
David H. Goldman
Black, Reimer & Goldman
550 39th Street, Suite 300
39th and Ingersoll Avenue
Des Moines, Iowa 50312

[EXHIBITS OMITTED]

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, et al.,	)	
	)	CIVIL NO. 83-687-B
Plaintiffs,	)	
vs.	)	RESISTANCE TO MOTION
	)	FOR LEAVE TO AMEND
EASTER ENTERPRISES,	)	COMPLAINT AND FOR
INC., d/b/a	)	EXTENSION OF DEADLINES
ACE LINES, INC.,	)	
	)	
Defendants	)	

COMES NOW the defendant and resists the Novemer 8, 1984 motion of the plaintiffs to further amend their first amended Complaint herein and for an extension of deadlines. In support of this resistance, defendant states:

1. Plaintiffs' motion requests that the court grant them a blank check leave to amend upon the happening of certain conditions thirty days hence.

2. Plaintiffs' motion, apparently made pursuant to Fed. R.Civ.P. 15(a), is not properly presented in accordance with the requirements of Local Rule 2.2(.10) requiring that any party submitting a motion to amend shall attach to that motion the original of the amended pleading which the motion seeks to have filed. The required amended pleading is not attached to the motion and the motion is therefore to be denied.

3. At no time has defendant agreed to any extension of the deadlines set in the court Order of March 23, 1984.

4. This litigation is in its final stages, and the matters discussed in plaintiffs' motion raise new issues which would necessitate the addition of numerous additional parties and the commencement of monumental discovery nationwide. A leave to amend of this magnitude should not be granted without the defendant and the court having an opportunity to see and evaluate the amendment sought by the plaintiffs, which defendant takes to be the purpose of Local Rule 2.2(.10).

WHEREFORE, defendant prays that the plaintiffs' Motion for Leave to Amend and for Extension of Deadlines be denied. Defendant further requests that if plaintiffs' motion is deemed to be adequate for consideration of being granted that defendant be afforded the opportunity to make further submission and be granted the opportunity for oral argument.

/s/ David H. Goldman
BLACK, REIMER & GOLDMAN
550-39th Street, Suite 300
Des Moines, IA 50312
515/255-4141

ATTORNEYS FOR DEFENDANT
EASTER ENTERPRISES, INC.,
d/b/a ACE LINES, INC.

Copy to:

Paul A. Zoss
Adams, Howe & Zoss, P.C.
620 Hubbell Building
Des Moines, Iowa 50309
ATTORNEYS FOR PLAINTIFF

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

LORAN W. ROBBINS, MARION M. WINSTEAD, HAROLD J. YATES, EARL L. JENNINGS, JR., HOWARD McDOUGALL, ROBERT J BAKER, R. V. PULLIAM, SR., and ARTHUR H. BUNTE, JR., Trustees of the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, and CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,	)	Civil No. 83-687-B
Plaintiffs,	)	COMPLAINT
vs.	)	
EASTER ENTERPRISES, INC., d/b/a ACE LINES, INC.,	)	
Defendant.	)	

COMES NOW the Plaintiffs, by their attorneys, and for their cause of action against the Defendant states:

COUNT I

1. Plaintiffs are trustees of the Central States, Southeast and Southwest Areas Pension Fund (hereinafter referred to as "Pension Fund") and of the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter referred to as "Health and Welfare Fund"), which are, individual-

ly, multiemployer employee benefit plans within the meaning of § 3(1), (2), (3), and (37), § 502 and § 515 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MEPPAA) [29 USC § 1002(1), (2), (3), and (37), § 1132 and § 306, PL 96-364], and bring this action on behalf of themselves, the participants and the beneficiaries of these plans.

2. The Defendant, Easter Enterprises, Inc., d/b/a Ace Lines, Inc., is an Iowa corporation with its principal place of business in the State of Iowa, and is engaged in the business of transporting goods in interstate commerce as a common carrier.

3. Jurisdiction of this Court is founded upon § 301(a) of the Labor Management Relations Act of 1947, as amended [29 USC § 185(a)]; § 502 of ERISA [29 USC § 1132]; and § 306 of the Multiemployer Pension Plan Amendment Act of 1980 in that Plaintiffs are aggrieved by the Defendant's failure to honor and continued refusal to comply with certain terms of collective bargaining agreements as well as the trust plans and trust agreements of the Pension Fund and the Health and Welfare Fund, in violation of Federal law and of the laws of the State of Iowa. The matter in controversy is between a Defendant who is a citizen of the State of Iowa and the Plaintiffs who are all citizens of a state other than the State of Iowa.

4. Defendant is an employer and a party in interest in an industry affecting commerce within the meaning of § 3(5), (11), (12), and (14) of ERISA [29 USC § 1002(5), (11), (12), and (14)], § 3 of MEPPAA and the Labor Management Relations Act of 1947 (29 USC § 151 *et seq.*).

5. At all times relevant hereto, the Defendant was a party to and agreed to abide by the terms of collective bargaining agreements between itself and various locals of the Interna-

tional Brotherhood of Teamsters, Chauffeurs, Warehousers and Helpers of America (hereinafter referred to as "Teamster" locals), which are labor organizations that represent, for purposes of collective bargaining, certain employees of Defendant and employees of other employers in industries affecting interstate commerce within the meaning of § 2(5), § 9(a), and § 301(a) of the Labor Management Relations Act of 1947, as amended [29 USC § 151 *et seq.*].

6. The executed collective bargaining agreements described herein and attached hereto as Exhibit A contain provisions whereby Defendant agreed to make timely payments to Plaintiffs' Trust Funds for each employee covered by said agreements and to be bound by the terms and conditions set forth in the Central States Trust Agreements pursuant to which said funds have been established and are maintained in accordance with § 302 of the Labor Management Relations Act of [29 USC 186] and §§ 402 and 403 of ERISA [29 USC 1102, 1103]. A copy of the Trust Agreement for the Pension Fund is attached hereto as Exhibit B, and a copy of the Trust Agreement for the Health and Welfare Fund is attached hereto as Exhibit C.

7. Defendant has executed participation agreements whereby it agreed to make timely payments to Plaintiffs' Trust Funds, to be bound by the terms, conditions, rules and regulations governing Plaintiffs' Trust Funds and Trust Plans, and to designate as its representatives such Trustees as are named in the Trust Agreements together with their successors.

8. Defendant has failed to make timely payments to Plaintiffs' Trust Funds on behalf of each of its employees for those time periods for which contributions are due under the collective bargaining agreements and has failed to perform its obligations under the terms and conditions of the Pension Fund

Trust Agreement and Health & Welfare Fund Trust Agreement.

9. § 306(a) of the MEPPAA, adding § 515 to ERISA, provides:

> Sec. 515. Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

10. Plaintiff's Pension Trust Agreement, as amended, provides, *inter alia*, pursuant to Article XIV, Section 4, and Plaintiff's Health & Welfare Trust Agreement, as amended, provides, *inter alia*, pursuant to Article XI, Section 4, that:

> Sec. 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer shall be obligated to pay interest on the moneys due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including, but not limited to, attorneys' fees and such fees for late payment as the Trustees determine and as permitted by law. The interest payable by an Employer in accordance with the preceding sentence, shall be computed and charged to the Employer at the prime interest rate established by the Chase Manhattan Bank (New York, New York) for the fifteenth day (15th) day of the month for which the interest is charged.

Any judgment against an Employer entered on and after September 26, 1980, for contributions owed to this Fund shall include a mandate of the court the greater of (a) a doubling of the interest computed and charged in accordance with this section or (b) liquidated damages based on the unpaid contributions only (exclusive of interest) as determined by the court in the amount of 20% in accordance with the Multiemployer Pension Plan Amendments Act of 1980, the Employee Retirement Income Security Act, 29 U.S.C. 1132(g)(2)(C)(i) and (ii).

11. § 502(g)(2) of ERISA, as amended by MEPPAA is (§ 306(b)(2), provides:

> (2) In any action under this title by a fiduciary for or on behalf of a plan to enforce section 515 in which a judgment in favor of the plan is awarded, the court shall award the plan —
>
> (A) the unpaid contributions,
>
> (B) interest on the unpaid contributions,
>
> (C) an amount equal to the greater of —
>
> (i) interest on the unpaid contributions, or
>
> (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
>
> (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
>
> (E) such other legal or equitable relief as the court deems appropriate.

> For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1954.

12. Pursuant to the above-cited statutory and Trust Agreement provisions, Defendant is indebted to Pension Fund and the Health and Welfare Fund for such sums as may be found to be due and owing from Defendant to Plaintiffs for delinquent contributions, interest thereon at the rate specified in the Trust Agreements, an additional amount equal to the interest on unpaid contributions, attorney fees, costs of this action, and other expenses of collection incurred by the Plaintiffs.

13. Despite demands that Defendant perform its statutory and contractual obligations with respect to making contributions to Plaintiffs' Trust Funds, Defendant has failed, neglected, omitted and refused to make said payments. Defendant owes to the Central States, Southeast and Southwest Areas Pension Fund the sum of $44,890.00 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $9,582.10 through October 19, 1983 for account No. 0059200-0105 and $11,121.60 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $3,644.96 through October 19, 1983 for account No. 0063100-0100.

14. Despite demands that Defendant perform its statutory and contractual obligations with respect to making contributions to Plaintiffs' Trust Funds, Defendant has failed, neglected, omitted, and refused to make said payments. Defendant owes to the Central States, Southeast and Southwest Areas Health & Welfare Fund the sum of $15,483.70 for unpaid contributions through October 19, 1983, and accumulated interest in the amount of $6,455.51 through October 19, 1983 for

in the amount of $6,455.51 through October 19, 1983 for account 1983 for account No. 0059200-0105 and $17,187.89 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $8,534.20 through September 15, 1983 for account No. 0063100-0100.

15. Plaintiffs have no adequate remedy at law for Defendant's refusal to comply with the terms, conditions, rules, and regulations governing Plaintiff's Trust Funds; and, unless the Defendant is enjoined from breaching and continuing to breach the terms of the collective bargaining agreements as well as the Trust Plans and Trust Agreements and mandatorily compelled to comply with said documents, Plaintiffs and their Trustees will suffer irreparable harm.

16. The Defendant continues to refuse to comply with the terms of the collective bargaining agreement as well as the Trust Plans and Trust Agreements, thus continues to create additional delinquencies. The Pension Fund and the Health and Welfare Fund may be required to continue to provide benefits for the Defendant's employees, as they have in the past, even though the Defendant has not made the required contributions to fund those benefits, thereby creating the risk that the assets of the Trust Funds will be inadequate to provide benefits for employees of other employers who are making the required contributions.

WHEREFORE, Plaintiffs pray for the following relief:

1. An Order to show cause why Defendant should not be enjoined from violating the terms of the statutes, the collective bargaining agreements, the Trust Plans and the Trust Agreements.

2. A preliminary injunction enjoining Defendant from violating the terms of the statutes, the collective bargaining agreements,

the Trust Plans and the Trust Agreements and requiring Defendant to remit its current contributions to Plaintiffs on a timely basis while this action is pending.

3. A permanent injunction upon hearing of this cause, enjoining the Defendant from violating the terms of the statutes, the collective bargaining agreements, the Trust Plans and the Trust Agreements and requiring Defendant to remit its contributions to Plaintiffs on a timely basis.

4.A judgment on behalf of Plaintiff, Central States and Southeast and Southwest Areas Pension Fund in the sum of $44,890.00 for unpaid contributions through October 19, 1983, and accumulated interest in the amount of $9,582.10 through October 19, 1983 for account No. 0059200-0105 and $11,121.60 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $3,644.96 through October 19, 1983 for account No. 0063100-0100 and interest thereon at the rate specified in the Trust Agreement thereafter, an additional amount equal to accumulated interest on the unpaid contributions, plus actual attorneys' fees and costs of this action, and for such other amounts as become due during the pendency of this proceeding.

5. A judgment on behalf of Plaintiff, Central States Southeast and Southwest Areas Health & Welfare Fund in the sum of $15,483.70 for unpaid contributions through October 19, 1983, and accumulated interest in the amount of $6,455.51 through October 19, 1983 for account No. 0059200-0105 and $17,187.89 for unpaid contributions through October 19, 1983 and accumulated interest in the amount of $8,534.20 through September 15, 1983 for account No. 0063100-0100 and interest thereon at the rate specified in the Trust Agreement thereafter, an additional amount equal to accumulated interest on the unpaid contributions, plus actual attorney's fees and

the costs of this action, and for such other amounts as become due during the pendency of this proceeding.

6. That the Court retain jurisdiction of this cause pending compliance with its Orders.

7.For such other, further or different relief as the Court may deem just and proper.

COUNT II

1. Paragraphs 1 through 15 of Count I, inclusive, are hereby incorporated by reference.

2.The benefits herein provided are pension benefits and medical, health, hospital, and welfare benefits, and thus are wages within the purview of § 91A.2(4)(c), Code of Iowa.

3. All wages to employees are to be paid to them or for their benefit at least monthly pursuant to § 91A.3, Code of Iowa.

4. The Defendant has wholly failed, refused, and neglected to pay the sums herein stated although demand has been made therefore.

WHEREFORE, the Plaintiffs pray as in Division I, plus liquidated damages as provided in § 91A.8 and defined in § 91A.2(6), Code of Iowa.

Respectfully submitted,
/s/ Paul A. Zoss
MYERS, KNOX & HART
600 Hubbell Building
Des Moines, IA 50309
Telephone: (515) 244-2329

ATTORNEYS FOR PLAINTIFFS

[EXHIBITS OMITTED]

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 86-2050

Central States Southeast and Southwest Areas Pension Fund—Howard McDougall, Trustee, Central States, Southeast and Southwest Areas Health and Welfare Fund—Howard McDougall, Trustee,	*	Appeal from the United States District Court for the Eastern District of Missouri.
Appellants,	*	
v.	*	
King Dodge, Inc.	*	
Appellee.	*	

Submitted: November 10, 1987

Filed: December 23, 1987

Before FAGG, Circuit Judge, HENLEY, Senior Circuit Judge, and WOLLMAN, Circuit Judge.

HENLEY, Senior Circuit Judge.

Appellants Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds and their Trustees (hereafter referred to collectively as Central States) commenced this collection action against appellee King Dodge, Inc. The sole issue on appeal is whether the district court applied the correct statute of limitations in barring all but $32.60 of Central States' claim. We reverse and remand to the district court.

The parties stipulated to all the relevant facts in this case. King Dodge is a party to a collective bargaining agreement which required King Dodge to make weekly contributions on behalf of its employees to a pension fund administered by Central States. As part of this obligation King Dodge executed a participation agreement assenting to the terms of Central States' Trust Agreement. For the period January, 1977 through October 15, 1985 King Dodge owes Central States $4,274.59 on its obligation to contribute to the pension fund and health and welfare fund. Central States' recovery of most this sum is dependent on which statute of limitations is applicable to its claim.

Relevant to the statute of limitations issue the Trust Agreement provides:

> This Agreement shall in all respects be construed according to and governed by the laws of the State of Illinois, including but not limited to the laws applicable to the rate of interest in the State of Illinois, except as such laws may be preempted by the laws and regulations of the United States.

Central States argues that this provision contractually binds the parties to Illinois' ten-year statute of limitations. During the pendency of this appeal a different panel of this court determined that the Trust Agreement's choice of law provision was inapplicable in another collection proceeding brought by Cen-

tral States. *Robbins v. Iowa Road Builders Co.*, 828 F.2d 1348, 1352-53 (8th Cir. 1987). The *Robbins* panel concluded that "an action to collect delinquent fund contributions states a federal cause of action. . . ." *Id.* Therefore, "arguments about the choice of law provision in the trust agreements and conflicts of law principles, arguments which are premised upon diversity jurisdiction, are inapposite," *id.* at 1353, and the most analogous statute of limitations from the forum state is applied. *Id.* The district court's holding in the present case appears to be foursquare with the decision in Robbins as to the inapplicability of Illinois' statute of limitations. However, because under either Illinois law or Missouri law a ten-year statute of limitations applies, we need not decide definitively which state's statute to apply.

"An action upon any writing . . . for the payment of money or property" shall be commenced within ten years. Mo.Ann.Stat. § 516.110(1) (Vernon 1952). All other actions upon contracts are to be commenced within five years. Mo.Ann.Stat. § 516.120(1) (Vernon 1952). Central States has previously litigated this issue in the Missouri district courts, both times resulting in the application of the five-year statute of limitations. *Central States, Southeast & Southwest Areas Pension Fund v. Aalco Express Co.*, 592 F.Supp. 664, 666 (E.D. Mo. 1984); *Robbins v. Newman*, 481 F.Supp. 1241, 1243 (E.D. Mo. 1979) (hereafter *Newman*). *Central States* is of little analytic value in the present case because there Central States admitted the applicability of § 516.120(1) and the gravamen of the decision was the effect of the choice of law provision in the Trust Agreement. 592 F.Supp. at 666.

The applicability of the reasoning in *Newman* is more troublesome. Fortunately, the Missouri Court of Appeals has recently addressed the distinction between the two statutes.

> It is the evolved principle of our decisions that, in order for the ten-year limitations period of § 516.110 to appertain, the writing must be not only for the payment of money, but also must contain a "*promise to pay money*. . . ." Once that obligation is found from the writing, the exact amount to be paid or other detail of the obligation may be shown by extrinsic evidence— *but not the promise itself.*

Superintendent of Insurance of New York v. Livestock Market Insurance Agency, Inc., 709 S.W.2d 897, 900 (Mo. Ct. App. 1986) (emphasis in the original) (citation omitted). In *Newman* the individual defendants' liability was at issue; thus the promise to pay money required proof through extrinsic facts. *Newman*, 481 F.Supp. at 1243; *see Superintendent of Insurance of New York*, 709 S.W.2d at 900 ("Thus, although in *[Martin v.] Potashnick* [358 Mo. 833, 217 S.W.2d 379 (1949)], there was a writing—an open account—that some indebtedness existed, that the debt was due and payable was determinable only by extrinsic evidence, and hence the contract was not a promise to pay money within § 516.110.") This case, however, is distinguishable from *Newman*. *King Dodge* does not deny its liability (apart from the statute of limitations defense) to pay Central States under the Trust Agreement. King Dodge asserts in its brief that because extrinsic evidence (i.e., the number of employees) is necessary to calculate the total debt due that § 516.110(1) does not apply. As we have seen, however, extrinsic evidence may be used to prove the exact amount owing. *Superintendent of Insurance of New York*, 709 S.W.2d at 900. "'[T]he essence of a promise to pay money is that it is an acknowledgment of an indebtedness, an admission of a debt due and unpaid.'" *Id.* (quoting *Potashnick*, 358 Mo. at _____, 217 S.W.2d at 381) (emphasis

by the court). Because King Dodge's promise is contained within the four corners of the writing, § 516.110(1) is the applicable statute of limitations if Missouri law applies.

Since under either Missouri or Illinois law a ten-year period of limitations applies, the decision of the district court is reversed and the cause is remanded for application of a ten-year statute of limitations and for further proceedings not inconsistsent with this opinion.

A true copy.

Attest:
CLERK, U.S. COURT OF APPEALS,EIGHTH CIRCUIT.

No. 87-1497 (3)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

EASTER ENTERPRISES, INC. d/b/a ACE LINES, INC.,
Petitioner,

v.

LORAN W. ROBBINS, MARION M. WINSTEAD, ROBERT S. SANSONE, R. JERRY COOK, HOWARD MCDOUGALL, ROBERT J. BAKER, R.V. PULLIAM, SR., AND ARTHUR H. BUNTE, JR., TRUSTEES OF THE CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND AND CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS HEALTH AND WELFARE FUND,
Respondents,

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RUSSELL N. LUPLOW, P.C.
Russell N. Luplow*
Diana L.S. Peters
33 Bloomfield Hills Parkway
Suite 145
Bloomfield Hills, MI 48013
(313) 644-8666
Attorneys for Respondents
**Counsel of Record*

April 22, 1988

BOWNE OF DETROIT
615 SECOND AVENUE - DETROIT, MICHIGAN 48226 - (313) 964-1330

16 pp

QUESTION PRESENTED

Whether the statute of limitations applicable to state law actions on written contracts is the most analogous statute to be applied to trustee collection actions arising under the LMRA and ERISA? (Petition)

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SUPREME COURT OF THE UNITED STATES
October Term, 1987

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Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENTS' STATEMENT OF THE CASE

The Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds ("Central States") are two of the largest Taft-Hartley employee benefit trusts in the United States. In accordance with the LMRA (29. U.S.C. § 186(c)(5)) and ERISA (29 U.S.C. §§ 1102-1104), the Central States Funds are each administered pursuant to a comprehensive written Trust Agreement. Article III, Section 1 of each Trust Agreement provides that "[e]ach Employer shall make continuing and prompt payments to the Trust Fund as required by the applicable collective bargaining agreement between the parties." (Jt. App.

89, 109). Article III, Section 5 permits the Trustees (by their representatives) to audit the pertinent records of contributing employers to verify the accuracy of reporting and contribution. (Jt. App. 90, 110). Article III, Section 4 authorizes the Trustees to demand and collect contributions and to initiate legal proceedings (if necessary) to effectuate collection. (Jt. App. 89-90, 109-110).

Ace Lines is an Iowa corporation and long-time contributor to the Central States Funds. For many years Ace was signatory to national collective bargaining agreements which incorporate the Trust Agreements by reference and require specified weekly contributions to both Central States Funds. (Jt. App. 35, 37, 53-66). Ace Lines also executed three "Participation Agreements" in which the employer likewise agreed to be bound by the terms and conditions of the Central States trusts. (Jt. App. 122, 137, 138).

On December 12, 1983, the Trustees filed suit against Ace Lines to collect delinquent contributions. Jurisdiction was invoked under Section 301(a) of the LMRA and Section 502 of ERISA as Ace had violated both the Trust Agreements and the collective bargaining agreements. (Complaint, ¶ 4, Jt. App. 4). By way of affirmative defenses, Ace answered that the Trustees' action was barred by the ERISA statute of limitations (unspecified), by a six-month statute of limitations governing actions arising under the LMRA, and by the two-year statute of limitations applicable to actions arising under Iowa's Wage Payment Collection Act (Ia. Code 91A). (Jt. App. 13-18).

In response, Central States contended that Ace Lines should be held to its agreement to comply with the terms of the Trust Agreements and hence to Illinois' ten-year statute of limitations as provided for in the contracts.[1] Alternatively, Central States argued that Iowa's ten-year statute of limitations for actions on written

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[1]In accordance with Article XIV, Section 7 of the Trust Agreement governing the Pension Fund and Article XI, Section 7 of the Trust Agreement governing the Health and Welfare Fund, such legal proceedings are uniformly subject to Illinois' ten-year statute of limitations for actions on written contracts regardless of the state in which the Trustees elect to sue under 29 U.S.C. § 1132(e). (Cross-Petition for Certiorari, p.2).

contracts should be applied in the event the court believed itself bound to apply the law of the forum state.

On January 23, 1985, the Magistrate ruled that Central States' claims were governed by the two-year statute of limitations applicable to Iowa's Wage Payment Collection Law. (Jt. App. 215-217). In two separate opinions (October 11, 1985 and March 6, 1986), the district court affirmed. (Petition, Appendices D and E, 21a-26a). Agreeing with Ace Lines that Iowa had the "most significant relationship" to the action and that Iowa's Wage Payment statute of limitations was "most analogous," the court also stated that "a two-year limitations period for actions to collect delinquent employee benefit plan contributions is no more too short to comport with congressional policy than a ten-year period would be too long." (*Id.*, 25a). This result served to time-bar most of Central States' claims.

An interlocutory appeal was taken to the Court of Appeals for the Eighth Circuit, which reversed the ruling of the district court. The court held that the most analogous state statute of limitations was the one governing actions on written contracts. In so ruling, the panel rejected the district court's characterization of trustee collection actions as "labor disputes" and hence the short statute of limitations applicable to actions arising under the wage payment act. The Eighth Circuit also rejected the Trust Agreements' "choice of law" provision as "inapposite" to nondiversity actions arising under federal law. (Petition, Appendix B, 14a-17a). Both Central States and Ace Lines filed Petitions for Rehearing *en banc* which were denied on November 24, 1987.

REASONS NOT TO GRANT ACE LINES' PETITION

1. Supreme Court Review Is Not Warranted Until The Third Circuit Revisits DeBolt In Light Of Schneider

It is well established that actions involving contributions to employee benefit plans governed by ERISA and the LMRA are actions "arising under" and governed by federal law. Neither statute contains a limitations period for the governance of trustee collection actions. Nevertheless, this Court has articulated guidelines for selecting the "most appropriate" or "most analogous" statute of limitations to fill this Congressional silence. In accordance with *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966) and *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), a court's task is first to "characterize" the action (i.e., the claims involved) as a matter of federal law in order to find a suitable analogy and then to apply the analogous statute of limitations that is also "most appropriate" because it best promotes the federal objectives and policies intended to be served by the statute under which the federal cause of action has arisen. Though not exclusive, state law remains the primary source from which to borrow.

The *contractual* nature of trustee collection actions is clearly evidenced by the language of the relevant provisions of the LMRA and ERISA. Section 302(c)(5) of the LMRA (29 U.S.C. § 186(c)(5)) prohibits an employer from making and trustees from accepting contributions except pursuant to detailed written agreements. *Arroyo v. U.S.*, 359 U.S. 419 (1959); *Moglia v. Geoghegan*, 403 F.2d 110 (2d Cir. 1968). Courts enforce this mandatory "writing" requirement with uncompromising rigidity; hence, oral understandings are never permitted to modify an employer's written contribution obligations to Taft-Hartley employee benefit funds. *Lewis v. Seanor Coal Co.*, 382 F.2d 437 (3d Cir. 1967); *Moglia v. Geoghegan, supra; Waggoner v. Dallaire*, 649 F.2d 1362 (9th Cir. 1981).

Actions to enforce detailed written agreements concerning pension and health and welfare contributions—whether incorpo-

rated in a collective bargaining agreement or in a trust agreement—may be brought both under Section 301(a) of the LMRA (29 U.S.C. § 185(a)), which confers federal court jurisdiction over "suits for violation of *contracts* between an employer and a labor organization," (emphasis added) and under Section 502 of ERISA (29 U.S.C. § 1132), which confers federal court jurisdiction over suits to enforce Section 515 of the statute (29 U.S.C. § 1145). Section 515 establishes a federal cause of action sounding in *contract*: "Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement." (Cross-Petition, App. F, 27a).

Consistent with this statutory language, as well as the language of the Central States Trust Agreements, this Court unanimously characterized collection actions brought by the Trustees of the Central States Funds against two delinquent employers as suits "for the judicial enforcement of the trust terms" even though disputed terms of the employers' collective bargaining agreements required resolution by the district court in which the actions had been filed. *Schneider Moving and Storage Co. v. Robbins*, 466 U.S. 364, 366 (1984).

Likewise, both before and after *Schneider*, most courts of appeals have held, as did the Eighth Circuit, that Trustee collection actions arising under the LMRA and ERISA should be characterized as actions on contracts for the purpose of selecting an appropriate statute of limitations. *O'Hare v. General Marine Transport Corp.*, 740 F.2d 160 (2d Cir. 1984), *Central States, Southeast and Southwest Areas Pension Fund v. Kraftco*, 799 F.2d 1098 (6th Cir. 1986), *Trustees for Alaska Laborers-Construction Industry Health and Security Fund. v. Ferrell*. 812 F.2d 512 (9th Cir. 1987); *Hawaii Carpenters Trust Fund v. Waiola Carpenter Shop, Inc.*, 823 F.2d 289 (9th Cir. 1987).

While it is true that the state laws of New York, Tennessee, Alaska and Hawaii applied in the above cases do not distinguish

between "written" and "oral" contracts, there is nothing in these decisions to suggest that the Second, Sixth, or Ninth Circuits would select a shorter rather than a longer contract limitations period if a particular state's law required such a choice. In *Waiola, supra,* the Ninth Circuit stated: "[i]mposing too short a statute would interfere with the strong federal policy that underlies ERISA." 823 F.2d at 298. Moreover, in a subsequent decision, *Employees Health Trust v. Elks Lodge,* 827 F.2d 1324 (9th Cir. 1987), the court of appeals applied Washington's six-year written contract statute of limitations to a trustee collection action although Washington also has a three-year statute of limitations for actions on unwritten contracts. The panel regarded this result as consistent with prior Ninth Circuit precedents; i.e., *Ferrell, supra* and *Waiola, supra.*

In the instant case, the district court rejected the majority view and followed instead two decisions of the Court of Appeals for the Third Circuit: *Teamsters Pension Trust Fund v. John Tinney Delivery Service,* 732 F.2d 319 (3d Cir. 1984) and *Byrnes v. DeBolt Transfer, Inc.,* 741 F.2d 620 (3d Cir. 1984). There, the court of appeals ruled that Pennsylvania's Wage Payment Collection Act supplied the closest analog to trustee collection actions under the LMRA and ERISA and applied the short statute of limitations applicable to such actions. While these two decisions result in the existence of a split among the circuits, review is not warranted at this time. As the Eighth Circuit noted, the Third Circuit was without benefit of this Court's decision in *Schneider* at the time it ruled on *DeBolt.* (Petition, Appendix B, 15a-16a).

Since *Schneider,* no other circuit has applied the Third Circuit's rationale. In *Trustees for Alaska Laborers-Construction Industry Health and Security Fund et. al. v. Ferrell,* 812 F.2d 512, 517 n.3 (9th Cir. 1987), the Ninth Circuit noted but did not follow *Byrnes v. DeBolt Transfer,* ruling that "[t]he Trustee's claim can only be characterized as a straightforward breach of contract claim." (p.517). More important, the Eighth Circuit in the case at bar correctly rejected the Third Circuit's position as being inconsistent both with *Schneider, supra,* and with *Central*

States, Southeast and Southwest Areas Pension Fund v. Central Transport, 472 U.S. 559 (1985), in which this Court dealt with the administration of multiemployer employee benefit trusts and the corresponding characterization of trustee collection actions.

In light of the supervening decisions of this Court, it may be anticipated that the Third Circuit will itself reverse its approach to the statute of limitations issue thereby obviating the need for Supreme Court review to resolve the split in the circuits.[2]

2. This Court Should Not Review The Applicability Of An Oral Contract Statute of Limitations Or An ERISA Statute Of Limitations Since The Eighth Circuit Itself Did Not Address These Alternatives; Moreover, Such Alternatives Conflict With This Court's Precedents

The Court of Appeals did not rule upon the appropriateness of selecting either a statute of limitations governing unwritten contracts (five years both in Iowa and Illinois) or an ERISA statute of limitations (three or six years): "*The choice here is between actions for breach of written contracts and actions under the wage payment collection law.*" (Petition, Appendix B, 13a, emphasis added). Hence, review of these issues is not appropriate at the present time. *Youakim v. Miller,* 425 U.S. 231 (1976). Moreover, Petitioner's assertion that either of the above statutes of limitation might be "most appropriate" is not justified by any of this Court's prior decisions.

Contrary to Petitioner's assertion (Petition, pp. 11-14), there is no conflict between the Eighth Circuit's opinion and *UAW v. Hoosier Cardinal Corp.,* 383 U.S. 696 (1966). In *Hoosier,* the

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[2]As contended in the Cross-Petition, the Eighth Circuit did err in applying the written contract statute of limitations of Iowa (the forum state) where Petitioner had consented to the written contract statute of limitations of Illinois in accordance with the Trust Agreements governing the Central States Funds. Consequently, if the Petition is granted, the Court should also review whether the Trust Agreements' "choice of law" provision should be enforced as a matter of federal law.

Court stated only that a union's action for vacation pay on behalf of terminated employees had been "fairly characterized as one not exclusively based on a written contract" since the employees' rights derived both from a collective bargaining agreement and individual employment contracts. (p.706). Noting that "state statutes of limitations governing contracts not exclusively in writing are generally shorter than those applicable to wholly written agreements," the Court stated that application of Indiana's six-year statute of limitations rather than its twenty-year statute of limitations was consistent with "an identifiable goal of labor policy"; i.e., the rapid disposition of labor disputes. (*Id.*, p.707).

Far from asserting that state statutes of limitation for unwritten contracts should govern all Section 301 actions, the Court specifically cautioned that "[t]here may, of course, be Section 301 actions that can only be characterized fairly as based exclusively upon a written agreement." (*Id.*, p.707). Consistent with Section 302(c)(5) of the LMRA as well as *Schneider, supra,* an employer's contractual obligations to employee benefit funds can "*only* be characterized fairly as based upon a written agreement." Hence, there is no "long standing rule [of this Court] . . . that the forum state's unwritten contract statute of limitations would apply to Section 301 LMRA actions," as Ace Lines alleges (Petition, p.14). Therefore, Congress cannot have been said to have "adopted" such a rule when enacting Section 515 of ERISA.

In enacting ERISA and MPPAA, Congress was concerned solely with protecting the interests of fund participants and beneficiaries and hence with promoting through various strategies the financial soundness of employee benefit funds. The short statute of limitations generally applicable to unwritten contracts is inconsistent with these federal interests, particularly since pension funds would be required to grant credits and benefits to eligible plan participants even if the recovery of delinquent contributions were time-barred. *Central States v. Central Transport, supra.*

As the Ninth Circuit observed in *Hawaii Carpenters Trust Funds v. Waiola Carpenter Shop, Inc.*, 823 F.2d 289, 298 (9th Cir. 1987): "Congress has expressed its clear desire 'to remove jurisdictional and procedural obstacles which . . . appear to hamper [ ] effective . . . recovery of benefits due.' " (citations omitted). A short statute of limitations erects just such a "procedural obstacle" to effective collection efforts, as the Eighth Circuit correctly recognized.

Nor do this Court's decisions support the borrowing of an ERISA statute of limitations, as Petitioner suggests (Petition, pp.16-19). 29 U.S.C. § 1113(a)(1) and (2) contain a statute of limitations for breach of fiduciary duty claims (the earlier of three or six years depending upon Plaintiff's knowledge of the breach). Likewise, 29 U.S.C. § 1451(f)(1) and (2) contain a statute of limitations for withdrawal liability disputes (the later of six years after a cause of action arose or three years after the earliest date on which a plaintiff acquired or should have acquired actual knowledge of the existence of a cause of action). Trustee collection actions arising under Title I of ERISA are not substantively analogous either to Title I breach of fidicuary duty claims or to Title IV withdrawal liability claims. Neither *Del Costello v. Teamsters*, 462 U.S. 151 (1983) nor *Agency Holding Corp. v. Malley-Duff Associates, Inc.*, 107 S.Ct. 2759 (1987) support borrowing a federal statute of limitations where a state law alternative provides a closer, if not *the closest*, analog.

In *Del Costello, supra*, the Court borrowed the six-month statute of limitations applicable to unfair labor practice actions arising under Section 10(b) of the NLRA (29 U.S.C. § 160(b)) because there was no state law statute of limitations that was directly analogous to *hybrid* 301 actions in which an employee was required to prove both breach of contract against his employer *and* breach of the duty of fair representation against his union. The Court distinguished such cases, where the collective bargaining processes have broken down, from "straightforward" breach of contract actions of the type at bar in *Hoosier Cardinal,*

for which a state-law analog was found to be both clear and obvious. 462 U.S. at 163, 165.

In *Malley-Duff, supra,* the Court held that the four-year statute of limitations applicable to Clayton Act civil enforcement actions provided the most appropriate limitations period for civil RICO enforcement because: the civil action provision of RICO was expressly patterned after the Clayton Act and was intended to serve the same remedial purposes; the predicate acts establishing a pattern of racketeering under RICO typically occur in more than one state, making a uniform statute of limitations desirable; the predicate acts themselves are of such variety that no single state-law analog could be found. None of these problems exist with regard to selecting a statute of limitations for trustee collection actions arising under ERISA and the LMRA. Moreover, in contrast to RICO actions which were unknown at common law, Central States' actions are based on the Funds' Trust Agreements, written contracts that were originally founded in common law.

In *Malley-Duff,* the Court stated: "Given our longstanding practice of borrowing state law, and the congressional awareness of this practice, we can generally assume that Congress intends by its silence that we borrow state law." 107 S.Ct. at 2762. Hence, the result in that case was the exception not the rule. With regard to ERISA, Congress clearly understood how to fashion a statute of limitations for trustee collection actions had it wished to do so. Consistent with this Court's precedents, the absence of an ERISA limitations period for such actions should not be construed as an invitation to engage in judicial legislation. As the Eighth Circuit clearly recognized, the establishment of a uniform limitations period for *all* ERISA collection actions and binding on *all* multiemployer funds can be achieved only by statutory amendment. (Petition, App. B, 12a). Accordingly, further review by this Court on this issue is not warranted.

III. CONCLUSION

The Eighth Circuit's selection of a written contract statute of limitations for collection actions under ERISA and the LMRA is consistent with the language of these statutes, with decisions of this Court, and with the decisions of nearly every court of appeals. For these reasons, review of this issue is not required.

Respectfully submitted,
RUSSELL N. LUPLOW, P.C.

By: _____
Russell N. Luplow

And: _____
Diana L.S. Peters
Counsel for Respondents/
Cross-Petitioners
33 Bloomfield Hills Parkway
Suite 145
Bloomfield Hills, Michigan 48013
(313) 644-8666

Dated: April 22, 1988